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Chair of Comparative Public Law

**Constitutional rebuilding after the genocide:
reconciliation and memory in modern Rwanda**

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*It is not “forgive and forget” as if nothing wrong had ever happened,
but “forgive and go forward”, building on the mistakes of the past
and the energy generated by reconciliation to create a new future.*

Alan Paton

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~ INTRODUCTION ~

The Rwandan genocide that took place between April and July 1994 was often portrayed by the media and public opinion as an ethnic and tribal war that had little to do with Western society and civilization and was therefore not only unworthy of media relevance, but also incomprehensible. When someone defines a conflict, especially if it is African, as "tribal" he does so in order to give a shadow of unintelligibility to it. The media and political agents use this term to ensure that the western population and readers do not care about the issue and do not allow themselves to be pushed into wanting to find the causes. The genocide of Rwanda, like all the wars fought in Africa in the 20th century, had nothing tribal or ancestral about it, on the contrary it was expressly of a political, economic and post-colonial nature. Like all the genocides that occurred in the second half of the last century, although preventable, it was not stopped by the United Nations and the international community but only by a military intervention of an organized army (Vietnamese in Cambodia, USSR in Poland).

The events that took place in Rwanda in 1994 were openly recognized by the international community as genocide only at the end of it. Usually, in fact, while an extermination is taking place, the great powers such as the United States, China, Russia, France and England, deliberately avoid recognizing it as genocide, because given the International Convention of 1948, they would be obliged to intervene. Therefore, they limit themselves to defining it as ethnic or tribal war. The United States after the defeat in Somalia had no intention of engaging in another confrontation in the heart of Africa that the public would not have understood, China, Russia and England had never had any interest in the area, while France's role was as great as it was shameful and destructive. It is thanks to the government of Paris, in fact, that so many weapons and funding arrived in Kigali between 1993 and 1994. The limits, which have always been attributed to the executive body of the United Nations, the Security Council, came to light in 1994 in the Rwandan case, as had already happened in Cambodia and as would have happened in Bosnia and Darfur shortly afterwards. Like the Rwandan one, other great exterminations of the 20th century were recognized as genocides only when they were over (Bosnia, Armenia, Cambodia and Kurdistan). The veto power held by the Big 5 has constantly obstructed joint actions under Article VII of the UN Charter and such atrocities have been stopped only by interventions of national armies like the Vietnamese one against the Khmer Rouge or the FPR against the Hutu militia.

The term genocide comes from the Greek γένος 'lineage'. It was coined by Polish jurist Raphael Lemkin in 1944 and first used in public in Nuremberg to describe the horrors committed by

Nazi-Fascism. Lemkin analyzing the Nazi system describes it as sophisticated and well-orchestrated, only in this way was it possible to achieve such a degree of brutality.

The Rwandan genocide was similarly prepared by an elite who, faced with an economic and political crisis, selfishly tried to save themselves by blinding their people with hatred and throwing the Hutu majority against the Tutsi minority. In the present study we will see how even the division on ethnic and racial basis is unrealistically determinable and how this too has been the result of meticulously studied media and political manipulation.

The de-humanization of the rival has always been one of the tactics used by genocidaires. The Nazis called the Jews rats and the Hutus called the Tutsis cockroaches, comparing them to an animal by nature dirty, disease-carrying and slipping everywhere. De-humanization uses explicit strategies, which openly deny the humanity of the other, and subtle strategies, which unconsciously erode the participation of others in humanity. The man affirms his superiority over the animal and fears its behavior. Therefore, when the man animalizes his fellow man by calling him with the name of a beast, he gradually removes his human character and equates him with the beast, justifying with the passage of time his attitudes of repulsion and hatred.

Media propaganda at the same time played a central role. The genocidaires based their violent promotion on a document entitled '*act on propaganda of expansion and recruitment*', found in Butare. The author applied the techniques studied by Goebbels and Lenin, according to which it was necessary to use lies and exaggerations to attack the enemy. More precisely, the tactic used was that of the accusation in the mirror, according to which whoever used violence, must first charge the other with violence to justify his own. In this, first Radio Rwanda and then RTLM, were masters and under the guidance of the government, they made simple farmers who had always been dedicated to the work of the land, bloodthirsty murderers capable of killing the members of their own family.

The present work, however, does not aim to recount the genocide and the tragic events that marked it in 1994. Since there have already been countless testimonies and studies of that period, I would like to answer questions about the events that followed. This study is intended to analyze the effects of the policies of reconstruction and reconciliation 25 years after the genocide. It is in continuity with the analysis previously made by Phil Clark dated 2010 and tries to find some answers to the questions he asked during his study. To do this, however, it will be necessary to tell the history of the country and highlight the causes that led to ethnic and racial division and therefore to genocide. Understanding what happened before 1994 is essential to be able to judge whether there has been a real change of course since 2000 or whether what we are witnessing is a simple and usual regime change following a war. The work will show how the process of reconstruction of the state and its three powers took place, the role of the *Gacaca* courts will be analyzed and the importance of memory

and forgiveness in the reconciliation process will be highlighted. To do this, I have divided the work into four chapters.

The first chapter, of historical nature, will analyze the history of the country. Using mainly the texts of Chrétien and Prunier, I will analyze the events that marked the 20th century in Rwanda. The German domination represented the first contact between Europeans and the Rwandan people, who at the time were led by a monarchy. The state was divided into 12 tribes and the division of the people was more regional than ethnic. In fact, each tribe had both Hutus and Tutsis within it. There are no written sources prior to German domination and therefore everything known about the pre-1900s is due to oral tradition. After the defeat in the Great War, the Germans handed over the protectorate of Rwanda-Urundi to Belgium, which administered it until 1960. The Belgians introduced a new way of governing. They were more socially present than their predecessors and brought innovations such as schools, hospitals and public institutions. The Belgians, however, also introduced an identity card with the race of each citizen, which was transmitted from father to son. Gradually the Belgians, following the *'divide et impera'* method, gave more and more power to the Tutsi minority (15%) because they were the richest and wealthiest of the time. In this way the Tutsis conquered important roles in politics, administration, army, education, being the leaders in every sector. With the wave of post-colonial independence started by Gandhi in India, also in East Africa the countries began to separate themselves from the European rulers. Under the teachings in neighboring Tanzania of the *'Mwalimu'* Julius Nyerere, hopes of independence also reached Rwanda and became a reality in the early 1960s. With free and democratic elections, the Hutus (85%) naturally took power and the situation was reversed. Gregoire Kayibanda first and Juvenal Habyarimana since 1973, administered the country under a dictatorial regime based on monopartism and racial segregation. Many Tutsis fled to Uganda in 1959 but many others remained in the country and suffered constant massacres until 1990 when a Tutsi army that had lived abroad for the last 30 years tried to liberate the country. The resulting war was resolved by the Arusha Accords of 1993, but they lasted very little longer. On April 6, 1994 the presidential airplane with Habyarimana on board was shot down near Kigali airport. 45 minutes later began the 100 days of slaughters that produced more than a million deaths. The United Nations reduced its contingent in the country and never allowed their military command, led by Gen. Dallaire, to intervene. The genocide was stopped by the RPF army guided by Paul Kagame who led the offensive from the North. France intervened from the south, officially to liberate the country but in reality, to save all of its collaborators of the Hutu government perpetrators of the genocide, many of whom still live in France today. Kagame found himself having to rebuild from the ground up a country with a shattered infrastructure, an ongoing cholera epidemic, millions of displaced people and a population that had half killed and half suffered violence.

The second chapter analyses the transitional justice system organized in Rwanda following the genocide. Mainly through the studies of Clark and Sullo I will analyze the implementation and the role that the *Gacaca* courts have played in Rwanda transitional justice. At the end of 1994 the country was destroyed and while the ICTR in Arusha was judging the leading minds of the genocide, in the country of a thousand hills the prisons continued to be filled with possible genocidaires. To judge the nearly 120,000 defendants, a system that had been present in Rwanda since before the arrival of the Germans, the *Gacaca*, was restored. Initially used to settle property disputes at the local level, the *Gacaca*, similar to the South African TRC, became real people's courts, present in each of the eleven thousand villages in the country. In 10 years, the 'meadow' courts examined more than a million cases. Of course, the *Gacaca* highlighted the shortcomings of a new system without expert judges, but overall, they were a huge success. Their main goal of bringing about reconciliation and forgiveness was achieved according to most of the population and the *Gacaca* are still today the most massive transitional justice experiment in the history of mankind. Within the chapter I will highlight their shortcomings and successes. I will explain the division of the accused and the condemned into the 4 bands established by the government and I will show the importance of the admission of guilt and the rehabilitation of the individual to the social life of the community. Finally, I will briefly show the other programs that have supported *Gacaca* in reconciliation: *Itorero*, *Ndi Umunyarwanda*, RPEP and reconciliation villages.

The third chapter analyses the constitutional reconstruction of the state apparatus. It will show the historical path and the referendums that led to the current constitution. It will highlight the controversies related to 'genocide law' and the international criticism that has arisen. It will be analyzed the very controversial constitutional referendum of 2015 that will allow Kagame to rule the country until 2034. The structure of the legislative and judicial apparatus will then be briefly described, and the executive apparatus will be analyzed in more detail through the analysis of the Kagame presidency. A description of Kagame's figure will be outlined first as military and then as president, his vision, his international relevance and the criticisms of 'illiberal state building' that have been addressed to him.

Finally, the fourth chapter will show the role and importance of memory in post-genocide societies with some parallels to the Armenian and Jewish genocide. Through the study of philosophers (Halbwachs, Margalit, Nora) it will be explained how collective memory has great importance in the uniformity of a people after a genocide. Halbwachs has spoken of the importance of memory for a people even before the Jewish holocaust. Starting from his studies, Pierre Nora highlighted the importance of '*lieux de memoire*' to remember those who died and the tragic moments.

Margalit then addressed the ethics of memory first, highlighting whether and why it is right to remember. In addition, he outlined the importance of forgiveness as an instrument of reconciliation.

The motivation that inspired me to deal with this topic and convinced me of its scientific peculiarity lies in the fact that Rwanda is the only case of genocide in recent history that has not led to the division of a state into several states. It is enough to mention Bosnia and Serbia, Armenia and Turkey, South Sudan and Sudan. The uniqueness of the Rwandan case also lies in the fact that in just 25 years the country, despite not possessing natural resources, has been able to move from the last places in the world rankings for development, education, health, to be a leader in Africa in socio-economic rights, education and that in the last 15 years it has reduced by 40% the population living below the extreme poverty line. In addition, one of the questions I will try to answer is whether this development is due to external aid, to a more complete development of the continent or whether the merits should be primarily attributed to the work of President Kagame, who has been in office for 25 years.

As far as the research methodology used is concerned, I started with the study of bibliographical sources and statistical analysis. Later I went to Rwanda where I conducted research and interviews in order to improve my knowledge of data sources and information not available in Italy. More precisely in the cities of Kigali and Huye I had the possibility to access the libraries and documentation of the University of Rwanda and the library of the CNLG (National Center against Genocide). In the cities of Gitarama, Gisenyi, Nyanza, Ngororero, Rususa, Busasamana, Ruhengeri, Kigali I conducted interviews and took part in the events in memory of the 25th anniversary of the end of the genocide. At the same time, I launched an anonymous online survey that tries to show the real accomplishments of the *Gacaca* in reconciliation. Given the complexity of the topic, many people in Rwanda are still struggling to talk about it openly, as most have suffered traumas that have still not been repaired. Therefore, the online survey, which consists of 15 questions, is completely confidential. The goals of the questionnaire are:

- to understand whether the people feel that the reconciliation has taken place and in what terms;
- to analyze which of the reconciliation tools proposed by the government has been most successful;
- to find out whether the role of the *Gacaca* has been understood or not;
- to examine which of the 6 targets proposed by the *Gacaca* has been achieved the most.

The answers are attached at the end of this work.

Through my work as Project Manager with the NGO Sports around the World I lived in 3 different villages and I was able to get in touch and establish relationships with survivors who told me about their experiences. This allowed me to have a more effective point of view in the writing of this study than I would have had only with the study of bibliographical sources. On my return to Italy

I continued the analysis of the sources and carried out further online interviews with experienced academics (Waldorf, Buscaglia, Michieletto). The texts that guided me the most in the research were those of Prunier, Clark, Sullo, Margalit.

This work aims to show how, through a careful reconstruction of the state and constitutional apparatus, an adequate system of transitional justice based on the declared objective of reconciliation, a real improvement in the living conditions of the population can be produced in a relatively short period of time. The history of Rwanda can be divided into three parts. The first is the pre-colonial one of which we know very little but whose traditions are still alive. The second is the colonial and post-colonial period (1890-1994) which was marked by deep social divisions that led to genocide. The third, which began in 1995, witnessed a country increasingly reunited under the leadership of its president, Kagame. The country has probably faced more problems than its neighboring states: extreme poverty, lack of natural resources, deep social divisions, epidemics, almost non-existent infrastructure, but despite this, after 25 years, it is, together with Botswana, the most livable state in sub-Saharan Africa. The government's strategies were immediately clear. Strong fight against corruption, education for all in English up to the age of 18, great investments in technology and poverty reduction have made Rwanda a model country for all its surrounding states.

~ CHAPTER ONE ~

Brief History of Rwanda from the Germans to Paul Kagame

*"I know there is a God because in Rwanda I shook hands with the devil.
I have seen him, I have smelled him and I have touched him.
I know the devil exists, and therefore I know there is a God"*

Romeo Dallaire

Introduction

Much has been said and written about the genocide in Rwanda from July 1994 until today. Certainly not enough has been reported before and during the events. In the hot summer of 1994, with the whole world connected to the United States for the Soccer World Cup, the country of a thousand hills, one of the smallest on the continent, made its way through the papers and the news for its tragic events. Since that summer many scholars, especially French speakers, have written and analyzed the pre and post genocide events. The United Nations International Court of Arusha (ICTR) has given great visibility to the judgment of the accused. But the defendants were no more than seventy in the face of about one million victims. Was that really the trial that would have done justice to the crimes? In an informal meeting, Antoine Mugesera, one of the most respected and authoritative Rwandan historians and former senator told me: "the genocide was perpetrated in Kinyarwanda and should be tried in Kinyarwanda" and I would add, according to Rwandan and non-Western customs, rules and traditions.

And you could say that it was. The United Nations, full of shame for not intervening and for turning their heads on the other side in the face of requests for help, set up their court with international judges who judged a small part of those who were the thinking minds and conductors of the genocidal orchestra, as was done in Nuremberg and will be done in The Hague. The real genocide, however, was committed by ordinary people, by farmers, by fathers who killed their grandchildren, by priests who killed their worshippers, and it was judged in Kinyarwanda by the *Gacaca* courts, as the Rwandan tradition wanted. *Gacaca*, in Kinyarwanda means meadow, was the assembly where the village gathered. Chaired by wise men and elders, who became judges on the occasion, was the third power of the republic, far in ideology and methods from the western courts. As we will see, the *Gacaca* after the genocide in 10 years, judged about a million cases with a specific purpose, to forgive and rehabilitate the person to life in the village instead of imposing a penalty and

isolate him from the community. The admission of guilt and the request for forgiveness were rewarded. Some confessed murderers took it upon themselves to raise and financially care for the children of their victims. This penal structure has been at the basis of the formation of the new state and the policy of reconciliation carried out by the Kagame governments since 2000. The policies pursued by Kagame have been aimed at reducing poverty, hunger, AIDS and epidemic diseases. At the same time, the government has focused its efforts on education and the development of a unique and united society in which executioners and victims could live together.

History will tell us whether what was done by Kagame will bear fruit and in this chapter, I will analyze the causes that led to the present situation. Without knowing the events that have happened since 1900 in this country it is impossible to understand recent events.

When developing a study on Rwanda, whatever the subject or topic, it is imperative to introduce a historical and geographical contextualization that allows the reader to fully understand the topics covered. Although this thesis aims to answer legal and political philosophy questions, it is necessary, in order to understand its relevance, to open the work with a chapter on history.

The following pages will tell, with the help of authoritative sources, the history of the country since the first written testimonies, i.e. from the German colonization at the end of the 19th century. We will go through the Belgian period and the thirty years of Hutu rule, until the war of 1990 and the genocide of 1994. In short, finally, we will analyze the years from 1994 to the present day, which will be dealt with in greater detail in the second chapter.¹

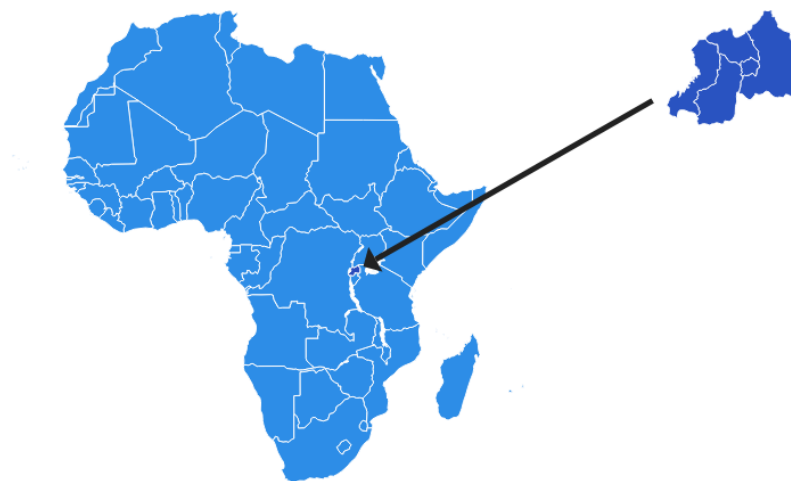


Figure 1 Position of Rwanda in Africa

¹ CIA World Factbook, Map of Rwanda with provinces and main cities

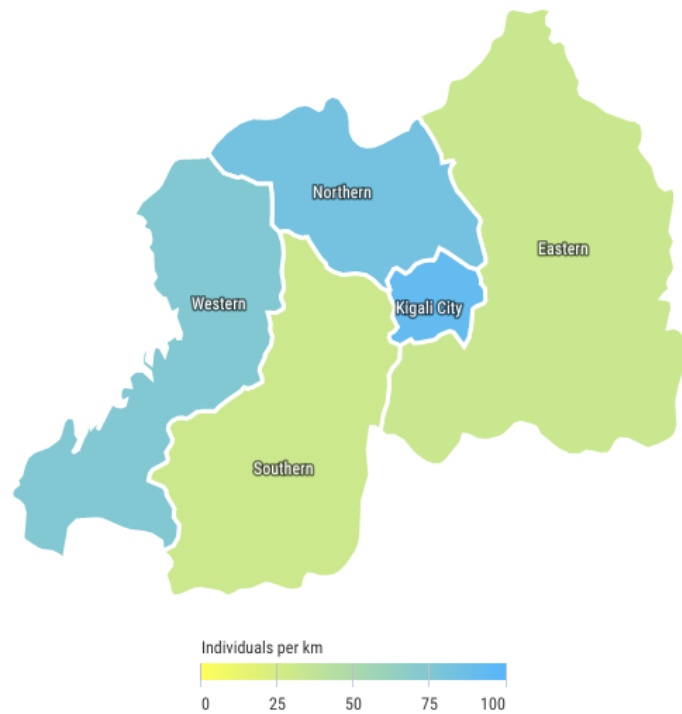


Figure 2 Map of Rwanda with Provinces and population density

From the origins to the Germans

Rwanda is a small state, similar in size to Wales or the Italian region of Lombardy, nestled in central-eastern Africa. The borders are almost all defined by nature: to the north a chain of volcanoes divides it from Uganda, the same chain and Lake Kivu separate Rwanda and the Democratic Republic of Congo to the west, to the east the river Kagera marks the border with Tanzania and to the south the border with Burundi divides what was previously a single Belgian protectorate. With its 12 million inhabitants it is the most densely populated state on the continent, has no access to the sea and has only one real working airport, that of the capital Kigali.

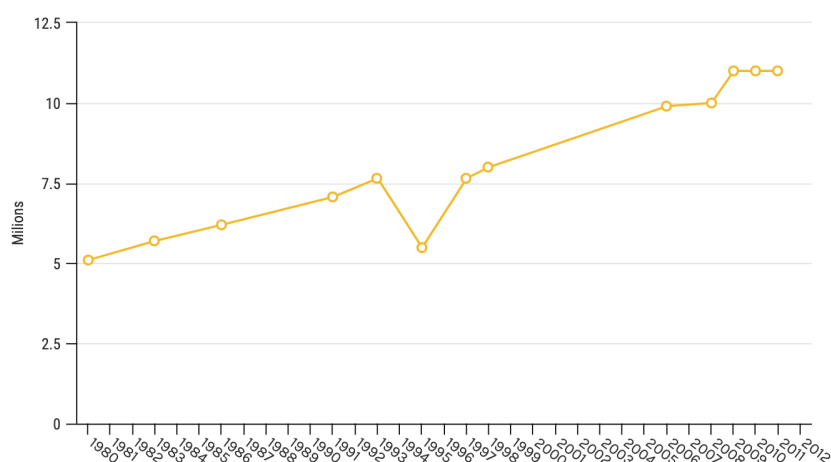


Figure 3 Rwandan Population Growth 1980 - 2012

The soil is not rich in natural resources except for a large bubble of methane gas under Lake Kivu which is still intact. About 70% of the population still practices subsistence agriculture while the government tries to expand the tourism sector further. Known as the country of a thousand hills, Rwanda is entirely curled up between its mountains and almost the entire national territory is located at more than 1400 meters above sea level. Due to its particular geographical position, the first Europeans arrived in Rwanda only at the end of the 19th century.

No reliable written information is available on the pre-colonial history of the country. It is believed that the original population is that of the pygmy-aborigines Twa², an ethnic group of hunters and gatherers. At the end of the first millennium A.D., the Bantu population of the Hutus arrived in the country and settled there permanently³. Around the eleventh century from Ethiopia came the Tutsis, a Nile Hamitic people dedicated to cattle breeding⁴. There are several theories about their appearance in the country. One believes that the Tutsis took power immediately, while another says that in reality the Tutsis have slowly climbed the social classes⁵. These two different points of view are the basis of one of the disputes that then generated the events of 1994. "The Hutus came from Chad and Senegal around the eighth century. The Tutsis in the eleventh century but there is no real documentation on the matter. Still nowadays, there are eighteen great clans in Rwanda and in each of them there are all three ethnic groups: Twa abega, hutu abega, tutsi abega⁶". Even today, the Hutus

² Mamdani, M. *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*. Princeton University Press, Princeton, N.J., 2002.

³ Chrétien, J.P., *The Great Lakes of Africa: Two Thousand Years of History*. MIT Press, Cambridge, Massachusetts, 2003.

⁴ Prunier, G. *The Rwanda Crisis, 1959–1994: History of a Genocide* (2nd ed.). C. Hurst & Co. Publishers, London, 1995.

⁵ Shyaka, Anastase. "The Rwandan Conflict: Origin, Development, Exit Strategies". National Unity and Reconciliation Commission, Republic of Rwanda. Retrieved 19 November 2015.

⁶ Interview with Professor Emmanuel Havugimana (Department of Geography @ University of Rwanda) on the 2/7/2019

constitute the majority (85%), while the Tutsis (14%) and the Twa (1%) are in the minority. One of the complementary objectives of this work will be to explain that in reality the ethnic difference is non-existent, and we can speak of only one Rwandan people.

The society passed first from the tribal organization to eight kingdoms, then the Tutsi Nyiginya clan took power and brought the kingdom to its maximum extension in the 19th century⁷. Nowadays you can see a reconstruction of the royal palace near Huye and study how the Rwandans lived in the pre-colonial period in the Ethnographic Museum of the city.

In 1884 the Berlin conference included the territory of Rwanda in the German East Africa. The Germans who came to the country from the DRC immediately tried to establish a good relationship with the king and the political elite. German interests were more scientific than political and concentrated during their stay on studying Rwandan population and geography. The Germans entrusted the leadership of the country to Richard Kandt, whose house is still the oldest brick building in the country, in the center of Kigali. It was Kandt himself who founded the current capital, given its central location. In fact, the oldest city in the country is Huye, the ancient Butare, in which stands the historic university campus of the University of Rwanda. During his time in Rwanda, Kandt discovered the original source of the Nile in the Nyungwe forest on the border with Burundi and conducted several explorations on Lake Kivu⁸. The Germans taught the Rwandan elite to use the first agricultural tools, imported measurements and calculations and the study of the land. In a country where even today the primary sector is the one that provides the most sustenance, the beginning of the 20th century was a turning point. The German period was short, during the First World War in 1916, the Belgians took control of the country which was then assigned by the League of Nations with the Treaty of Versailles as protectorate on Rwanda and Urundi⁹.

Belgians in Rwanda: *divide et impera*

The period of Belgian rule from 1916 to 1962 changed the country's internal ecosystem forever. The Belgians brought technological, agricultural, health and educational innovations to the

⁷ Chrétien, Jean-Pierre (2003). The Great Lakes of Africa: Two Thousand Years of History. Cambridge, Massachusetts: MIT Press (p. 160)

⁸https://web.archive.org/web/20080828163943/http://www.museum.gov.rw/2_museums/kigali/kandt_house/pages_html/intro/page_intro.htm.

⁹ Chrétien, Jean-Pierre (2003). The Great Lakes of Africa: Two Thousand Years of History. Cambridge, Massachusetts: MIT Press. (pag.260)

country. They founded the first schools (with the help of the *white fathers*¹⁰), built medical centers and imported new agricultural tools¹¹. The Belgian experience in the field of cultivation has renewed the rural system by introducing the periodic cultivation of the land. They also introduced new food as cassava, maize and Irish potatoes. They opened up to intensive coffee growing, obliging farmers into forced labor. During this period, many decided to emigrate to Uganda, then a British protectorate, where agricultural policies and working conditions for farmers were better. This was the first diaspora in Uganda that we know of. Others, as we shall see, will follow.

From a political point of view, as mentioned earlier, control over Rwanda and Urundi was entrusted to Belgium by the League of Nations. The Belgians centralized the state and in order to have better control of the local population, they introduced a system of divide and rule, giving the Tutsi minority control of the administration, economy and daily life more generally. I will explore the effects of this policy, especially from its philosophical and psychological point of view, in chapter three. Despite this, I believe it is right to explain at least the historical-social effects that this has had on the population and why it is believed that it was the initial cause that led to the genocide.

In a conversation, an elderly priest who prefers to remain anonymous, about the arrival of the Belgians and their relationship with the Catholic Church told me: "Before the Belgians there were the Germans. It's not very clear what they did. The written sources are minimal. The missionaries who arrived in the country created the first dioceses (Nyundo for example) and some important institutions. The king, worried about this religious invasion, tried in various ways to have the missionaries killed but, protected by the Belgians, they managed to find the first communities. The missionaries brought writing, school, and in fact still today some words are in German and French. Kinyarwanda, in fact, can be read grammatically as one would read in German. When the Belgians arrived in the country, they followed the logistical instructions of the church. The Fathers had a great influence on the modernization of society. It is said that there was a great *ruzagayura* (famine) in the period of the Second World War and it was the church itself that brought the food from Europe. The influence of the church was particularly important, especially in the administrative field. After a few years, the administrators, formed by the clergy, sided against the king. At this point the sovereign also had to lower his head and submit to the Belgian power. The king's son was baptized and then all the tribal leaders under the Belgians were baptized in 1933. The steps forward taken by the Europeans were many: women gained personal independence, they could leave the house alone and this was a

¹⁰The White Fathers were the priest which came from Europe, especially Belgians. They founded school, hospitals and taught the future ruling class.

¹¹ Chrétien, Jean-Pierre (2003). *The Great Lakes of Africa: Two Thousand Years of History*. Cambridge, Massachusetts: MIT Press. (pag.276)

great result. The church also had a great political influence. The bishops were administrative advisers. The church also introduced, from the European culture, wages in respect of working hours, justice and the courts. The first priests who arrived in Rwanda in 1917 were not well received because they did not marry by choice and this was not acceptable in a society like that of the time. The church with its seminaries formed the ruling class. The lay people who worked in the administration and had been trained by the Europeans began to demand democracy and individual freedom. The Belgians did not really leave. They only granted independence. But they had still infiltrated the administration. The church itself was still dependent on the *white fathers*.

In Rwandan culture and history, ethnic marriages exist and have always existed. The children take the father's ethnicity even if perhaps the mother, and the mother of both parents are of another ethnicity. Genetically, this leads to the rapid conclusion that there are no two ethnic groups after probably 800 years of unions between people of different ethnicity. Tutsis, originally from Ethiopia, should be taller, with a longer nose and slightly lighter complexion. The Hutus, on the other hand, are lower and have a bigger than longer nose. In fact, when you go to Rwanda today, you immediately realize that it is impossible to make a distinction on the basis of these elements. At the beginning of the 1900s, however, the Tutsis were those who held power and wealth, which at the time was calculated in cows. Therefore, the Belgians decided that whoever had more than 10 cows would be Tutsi and whoever had less than Hutu and thus all their descendants, without the possibility of a social climb.

Of course, the Tutsis were in the minority as most Rwandans cultivated the land instead of breeding animals, which were very expensive. Moreover, the Belgians did not know that in the central southern part of the country, a few years before their arrival there had been an epidemic that had affected most of the livestock and then who could be Tutsi found himself to be Hutu. Until then, the existence of two ethnic groups was known in society but this aspect was not really relevant in common life. The Belgians, however, decided to insert identity cards, in which in addition to personal data was indicated the ethnicity. The introduction of IDs in 1933¹² was of great help to the perpetrators of the genocide in the 90s and facilitated the work¹³. "An administrative reform between 1926 and 1930 led to the removal of all Hutus from the administration because the Belgians considered Tutsis to be the best in governing"¹⁴.

¹² Adam Curtis documentary All Watched Over by Machines of Loving Grace. BBC, episode 3.

¹³ Rosamunde van Brakel, The emergence of the identity card in Belgium and its colonies
May 2014. Available at

https://www.researchgate.net/publication/258763996_The_emergence_of_the_identity_card_in_Belgium_and_its_colonies

¹⁴ Interview with Professor Emmanuel Havugimana (Department of Geography @ University of Rwanda) in data
2/7/2019

To endorse their theories, the Belgians sent scientists from Europe, who began to measure the skulls of the Hutus and Tutsis, finding those of the first larger ones. Moreover, the Tutsis were taller and had a clearer complexion, which led to think that they had Caucasian origins. Some began to say that Tutsis were the descendants of Jafet, Noah's son and therefore had Jewish-Christian origins. To strengthen these policies, the Catholic Church that managed education in the country, prepared two different programs for the Hutus and Tutsis. The result of this was that in the 1940s most of the students were of the Tutsi ethnic group.

To help understand the phenomenon we can use the words of the Rwandan historian and former senator Antoine Mugesera: "The Belgians initially divided society into Bantu and Amid. But the Rwandans did not know this kind of ethnic distinction. The Rwandans in fact, not having written tradition, ignored their origins. The Belgians divided society to simplify the control of the administration. With regard to the division into Hutu and Tutsi with respect to cow ownership, it should be remembered that in 1928 there was a disease that exterminated the cows in the center-south of the country and therefore even the division based on the 10 cows did not reflect the real economic well-being of a person. There were Hutu and Tutsi in both ethnic groups. There was no division. It was done exclusively to divide the people and prevent revolts. The Tutsi had collaborated with the Belgians. The Hutus, on the other hand, who were in the minority and disadvantaged, have been seeking and gaining power since the 1960s. Belgium, however, could not abandon the area definitively and needed a base of support for control of the Congo and then left economic power to the Tutsis. This continued to irritate the Hutus."¹⁵

After the Second World War the United Nations confirmed the Belgian influence on Rwanda but the new King, Rudahigwa, with a democratic vision began to abolish the existing laws. The *ubuhake*, that is, the system of control of livestock by Tutsis alone, was abolished and the Hutus were able to begin to regain economic independence. This gave rise to many tensions. The following Catholic Church began to promote equality and take the side of the Hutus. As a result, the *ubuhake* and *uburetwa*, the system of servitude with which the Tutsi controlled the Hutus from the 16th century, was also abolished¹⁶.

Independence

In a global context, the years following World War II are marked by the Cold War in Europe and the crumbling colonial empires, especially in Africa and Asia. The independence movement was born partly because of the impossibility of nations like England and France to control such vast

¹⁵ Private Interview, Kigali, 18/07/2019

¹⁶ Twagilimana, Aimable (2015). Historical Dictionary of Rwanda. Rowman & Littlefield. pp. xxix.

territories, and partly because of the will of national elites to have their own independence. Just think of the Congress party led by Gandhi and Nehru in India or the formation of nation states in the Arab world. In this period the Pan-African movement was born. Based on the idea that "African people, both on the continent and in the diaspora, share not merely a common history, but a common destiny"¹⁷. The Pan-African movement's mission was to bring together all the descendants of the African continent, including colors found in the Caribbean, North and South America. The leaders of the movement were Julius Nyerere in Tanzania and Patrice Lumumba in Congo. Strong anti-colonial sentiments began to take hold throughout Central Africa. Nyerere known as *Mwalimu*, the professor, spoke openly about the problem of education reserved only for the elite. He began to talk about brotherhood and socialism among Africans as Malcolm X did at the same time in the United States. In a few years Nyerere became president of Tanzania and brought it to independence¹⁸. In Rwanda meanwhile, Gregoire Kayibanda founded the Parmenhutu party in 1957 with the aim of achieving independence. The party quickly became a militarized group. In November 1959 the first violence by the Hutus against the Tutsis who had in the meantime formed the UNAR party began. It is estimated that in 1959 alone, almost one hundred thousand Tutsis were killed and many, including the king, were forced into exile in Uganda. Only the arrival of a Belgian battalion allowed the massacre to end.

The violence of 1959 soon turned into a revolution. One hundred and fifty thousand Tutsis left the country and those who remained were excluded from political and administrative life. The Belgians held public elections that elected only Hutu representatives by the obvious majority. The violence continued and under pressure from the United Nations, Belgium divided the protectorate into two distinct states: Rwanda and Burundi.

The 33 years that began with the independence from Belgium and ended with the genocide were dominated by two strong male figures at the head of government. Sometimes similar and often different in their way of thinking, acting and internal politics, Kayibanda and Habyarimana, however, have sown hatred and racial feelings in the country that have led to the genocide. The Kayibanda government was certainly bloodier than the Habyarimana government, which was, however, a real totalitarian regime. With the continued complicity of the Catholic Church and often of European countries such as France and Belgium, the two presidents exacerbated the racial policies initiated by the Belgians but subverting the social order. Between the 1960s and 1980s a large part of the Tutsis living in Rwanda, especially the wealthiest, left the country, fleeing to neighboring countries. Some of them joined the army, administration and government in Uganda and held important positions until

¹⁷ Minkah Makalani, Pan-Africanism. Available at <http://exhibitions.nypl.org/africanaage/essay-pan-africanism.html>

¹⁸ Nyerere, Julius K. "Julius K. Nyerere's speech to the Congress." *The Black Scholar*, vol. 5, no. 10, 1974, pp. 16–22. *JSTOR*, www.jstor.org/stable/41066286. Accessed 6 Feb. 2020.

1994. Following UN directives and leaving the possibility of self-determination to the Rwandan people, the Belgians left the government of the country.

On September 25, 1961, a referendum was held by universal suffrage, which left the people free to decide whether Rwanda should become a republic or remain a kingdom. With the victory of the Republican front, Parmenhutu party leader Gregoire Kayibanda became the first democratically elected president in Rwandan history on October 26th¹⁹. Kayibanda's main objectives were to establish peaceful relations with other states, raise the standard of living of the population and increase the presence of Hutus in administration and schools. Relationships were established with 43 states including the United States, but rampant corruption opened up loopholes in the administrative system. School policies worsened conditions for Tutsis, whose percentage in schools fell to 9%. "There were desks for the Hutus and the Tutsis. The Tutsis were treated badly by the professors, they were called cockroaches"²⁰. The newspapers that supported the Tutsis were closed and the same happened to the opposition parties. From the violence that ensued about 75 thousand people died in a few years. The Catholic Church was clearly on the side of the government and managed and printed the only two newspapers that were read in the country. In the 1969 elections Kayibanda was the only candidate. The 1962 constitution, drafted and approved by the Hutu government, banned communist activity in the country, which created a lot of external tension in the middle of the Cold War²¹.

The Kayibanda government lasted until 1973, when it was overthrown by the then Minister of Defense, General Juvenal Habyarimana. Kayibanda was reported to have starved to death in prison in 1973²². Immediately, the new government repressed all political activities, suspended the constitution and the national assembly. At first, Habyarimana relaxed the Tutsi quota policies in the school and administration, securing initial Tutsi support but this, did not last long. Soon, he proposed the same policies, probably more incisively than his predecessor. Thousands of Tutsi who were head of administration, health, education, were forced to leave the country to Uganda and Congo. In 1975 Habyarimana founded the National Revolutionary Movement for Development (MRND), whose aim was to promote peace and development. The new constitution was approved in 1978 and led to Rwanda becoming a totalitarian regime. Habyarimana won all the elections until 1988 as the only candidate. All elections were suspected of fraud. In 1978 he won with 98.99%, in 1983 with 99.97%

¹⁹ Emmanuel Kwaku Akyeampong; Henry Louis Gates; Mr. Steven J. Niven (2 February 2012). *Dictionary of African Biography*. Oxford University Press. pp. 2

²⁰ Interview realized on the 07/07/2019

²¹ Constitution of Rwanda. November 24, 1962. Art. 39: "All communist activity and propaganda are forbidden."

²² Assemblée Nationale, Dossier Rwanda, "Celui-ci s'était construit sur la destruction de la Première République. Entre 1974 et 1977, 56 personnes, pour la plupart d'anciens dirigeants de la Première République, avaient été assassinés par les services de la sécurité. Le premier Président rwandais, Grégoire Kayibanda, était mort en détention en 1976, probablement de faim". Available at: http://www.assemblee-nationale.fr/dossiers/rwanda/r1271.asp#P1538_159983

and in 1988 with 99.98%²³. In 1990 he announced his intention to democratize the country and turn it into a multi-party state. In the same year the Republican, social-democratic, liberal and Christian-democratic parties were created²⁴. To tell the truth, it must be said that in the twenty years of Habyarimana, the violence against Tutsis was only sporadic and short-lived, absolutely not comparable to the mass murders that took place before 1973 or the genocide of 1994.

Moreover, Habyarimana had control over the Rwandan Bishops' Conference. One can even say that they had an excellent relationship, gave advantages to the church in exchange for the formation of the Hutus in schools and ecclesiastical health centers. With Habyarimana we witness a change: from the church that controls the state, to the state that controls the church. Since 1990 the church has remained silent in the face of all social and political injustices, whatever happened. The Catholic Church decided not to be mindful of the events of 1963, at the time of the first persecution of the Tutsis. At that time the parish priests who denounced were arrested. The opening up to multiparty politics in 1990 encouraged freedom of speech, but anyone who spoke of justice was considered pro-FPR²⁵. For example, a bishop was about to be ordained without the permission of Habyarimana. Three days before ordination he was forced to resign and rumors were circulated that he had a concubine, just because he was Tutsi. When the war began in 1990, Habyarimana's speeches began to be more violent and racist. The church managed to maintain its importance, because ordinary people have always seen in the church a rescue anchor for economic, social and justice aid. Even today, when help is needed, one goes to the church (*caritas*)²⁶. The Rwandan Church, one can say that it has always followed the will of the government, both before and after the genocide, with sporadic cases of disobedience.

From 1959 to 1990 about 500,000 Tutsis fled the country or were exiled by the Kayibanda and Habyarimana governments. Most of them moved to refugee camps in Uganda. The current Dean of Political Science at the University of Rwanda, Simeon Wheeler says, "35 years ago I started working with Tutsi exiles in Kampala (Uganda) in refugee camps. The desire to return has always been there. The leader at the time was not yet Kagame, but Fred Rwigyema. He was the general who had formed the RPF and all the children wanted to be like him. He was seen as a real leader who fought for his people. Rwigyema died on the second day of fighting in Rwanda (1994)"²⁷. On October 1st, the RPF forces trespassed into Rwanda, penetrating for 60km. The government troops assisted

²³ Philip Gourevitch, *We Wish to Inform You That Tomorrow We Will Be Killed with Our Families*. Farrar, Straus and Giroux, New York, 1998

²⁴ The Prosecutor versus Jean-Paul Akayesu, ICTR-96-4-T (International Criminal Tribunal for Rwanda 1998).

²⁵ Republican Patriotic Front is the party of President Kagame, at that time in exile in Uganda.

²⁶ Interview with a survivor who prefers to remain anonymous

²⁷ Interview with Simon Wheeler, Huye, July 2019

by the French army defeated the RPF, which was forced to take refuge in the Virunga Mountains. At the end of this attack, about 10,000 Tutsis were arrested in Kigali.

In 1990, the Elysium launched into a war against the FPR²⁸. A phone call between President Habyarimana and Jean-Christophe Mitterrand²⁹ was enough to involve France without the assent of Parliament in Operation Noroit. France waged a secret war on Rwanda from 1990 to 1994. The French army during this period was clearly on the side of the Hutu, blocking the advances of the FPR on several occasions³⁰. The French government, with Operation Noroit, by decision of Mitterrand, sent a company of 150 men to the front in support of the Kigali government. Shortly afterwards, the movement of another 450 men from the Central African Republic was ordered, assisted by 3000 troops arriving from Zaire as part of Mobutu's special force. The French aid to Kigali marked the beginning of the guerrilla warfare. Belgium withdrew its troops after a lively parliamentary confrontation and so only the French remained on the field. In November 1990 the Paris government had in the meantime granted a "development" loan of 84 million francs which was spent entirely on weapons. A month later, the central bank of economic cooperation in Paris allocated a further 49 million "for the realization of different projects". The whole of 1991 was characterized by guerrilla attacks and continuous encroachments of the RPF in the north, in the Ruhengeri area. Furthermore, in this period, the 'energetic' interrogations of the French prisoners of the FPR began³¹.

²⁸ *Un génocide sans importance. La Francafrique au Rwanda*, Tahin-Party ed, 2004

²⁹ Mitterrand's son was in charge of the Elysium African Cell and therefore in close contact with Habyarimana son. A picture of the character and the confusion between his private and official activities was made by Pascal Krop, *Le génocide franco-africain. Faut-il juger le Mitterrand?*

³⁰ Confession of Robert Galley, former Minister of Cooperation, to the Parliamentary Mission: "The first FPR attacks were stopped by French paratroopers" (hearing May 13, 1998), *Assemblée Nationale*, 1998.

³¹ Reported by the lawyer Eric Gilet, FIDS

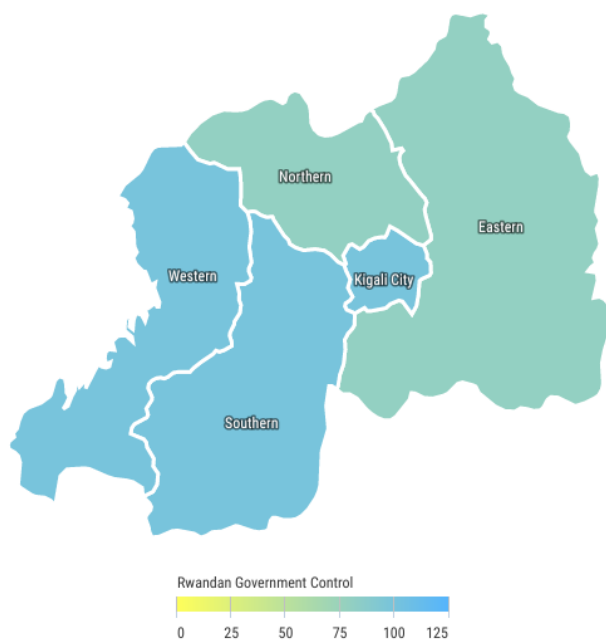


Figure 4 Rwandan Government Territorial Control 1990

In 1992, although the newly drafted constitution allowed multi-partisanship, the clashes and massacres did not stop (Kibilira, March 1992)³². It was during this period that Radio Rwanda and RTLM³³ began their bitter anti-Tutsi campaign. And it was then that Kagame decided to come back from the United States and take control of the army. After reorganizing the troops, a second offensive was launched in early 1993. In view of the situation and the growing protests in the country, peace began to be negotiated. From 1992 to August 1993, with the mediation of the Organization of African Unity, the heads of state of the Great Lakes region and the United Nations, a protocol was drawn up between the FPR and the Rwandan government of Habyarimana, the Arusha Agreements³⁴. The agreement provided for the inclusion of the FPR in the Rwandan political arena, the repatriation of refugees and the formation of a government that included both parties. The transitional government consisted of 21 ministers, 5 of whom were linked to the previous government, 5 to the FPR and the others equally divided among the other parties. On October 5, 1993, the UN Security Council passed Resolution 872 which established the assistance mission to Rwanda (UNAMIR) whose objective was

³² International Federation for Human Rights (FIDH). "Rwanda. Mass and systematic violations of human rights after October 1, 1990". (February 1993)

³³ Radio Television Libre des Mille Collines was the radio that promoted and followed the genocide. It told the names of the Tutsis to be killed and read the lists. In addition, in the run-up to the genocide, it promoted anti-Tutsi campaigns calling them cockroaches.

³⁴ Arusha Agreement, full document is available online at:
<http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/rwan1.pdf>

to oversee the proper implementation of the Arusha Agreements. The initial presence was about 2500 units (440 Belgians) and the mission was entrusted to Jacques-Roger Booh-Booh.

On 24 January, a cargo plane was intercepted in Kigali by UNAMIR, which had loaded weapons for the Rwandan Armed Forces (FAR) in Chateauroux (France). In the meantime, the Arusha pact was blocked because the Hutu politicians refused to form a government with the Tutsis.

On 4 April at an informal meeting at UNAMIR base, Colonel Bagosora³⁵ declared that the Arusha agreements "offer no guarantees" and spoke of "exterminating the Tutsis"³⁶.

On April 6, 1994, the presidential airplane with President Habyarimana and Burundi President Cyprien Ntaryamira on board was shot down while landing at Gregoire Kayibanda airport in Kigali, returning from Arusha. Suspicions about who shot down the plane still remain today. Whether it was the fault of Hutu extremists opposed to Arusha's or FPR's agreements. Fact is, an hour later, the genocide began.

One hundred days of genocide

Survivors still remember how the lists had already been prepared. Everyone knew who he had to kill. In the months before, everyone had put their Tutsi neighbors, sometimes even their family members, on the lists. In the days before April 6, machetes were distributed, which had been commissioned from France and China and had arrived in the country weeks before³⁷. In February 1994 alone, the Rwandan authorities had bought more machetes than in 1993³⁸. Import documents show that 581 tons of machetes were imported into Rwanda, as well as hammers, picks and sickles. Considering that a machete weighs one kilo, it is estimated that 581,000 pieces, i.e. one machete for every 3 adult Hutus in the country. After eliminating the Tutsi leaders in a few hours, it was easy to find through the previously compiled lists all those who were to be killed³⁹. The killing of Habyarimana in the meantime had left a vacuum in the executive and put an end to the peace treaties.

The genocide against the Tutsis and the moderate Hutus lasted 100 days, but the first were the most atrocious, demonstrating that everything had been organized beforehand. It is estimated that

³⁵ Bagosora was the mastermind and the director of the genocide orchestra. He was the leader of the army and took the control after the death of Habyarimana.

³⁶ See Filip Reyntjens, Rwanda. Three days that made history wobble, African Institute CEDAF/L'Harmattan, 1995.

³⁷ Prunier, Gérard (1999). The Rwanda Crisis: History of a Genocide (2nd ed.). Kampala: Fountain Publishers Limited (p. 169)

³⁸ Bought from Chillington Company, Cfr. *Le letter du Continent*, June 16, 1994

³⁹ According to the UN report of 28 June 1994, at least one million people, or 80-90% of the Tutsi population in the country at the time, were killed. A UN census kept secret from the Rwandan government in 1978, however, counted that the Tutsis were 25% of the population and if we calculate the increase in the birth rate in those years we soon reach an estimate of victims between 1.7 and 1.9 million, almost double the current estimates.

between 800,000 and 1.2 million people were killed, about 70% of the Tutsi population present. The executions were carried out mainly with machetes or rifles⁴⁰. It is also estimated that almost 500,000 women were raped, in order to make sure that the ethnicity was fully discovered⁴¹.

It is believed that the idea of the 'final solution' was born in 1992, when Habyarimana began negotiating peace with the RPF⁴². In 1990 the army began to teach civilians how to use the machetes, officially to protect themselves from a possible RPF invasion⁴³, but by handing over weapons to civilians only speeding up operations. In the years leading up to the massacre, the government and the Hutu elite were concerned to get a large number of weapons into the country, on the pretext that they had to be ready in the event of a DPRK attack. In 1990, the future UN Secretary General Boutros-Ghali, as Egyptian Foreign Minister, facilitated the sale of an immense number of weapons to Rwanda⁴⁴. In the same years, a list of 'traitors' to the Hutu-power was compiled. It seems that among others, also Habyarimana was present⁴⁵.

At the beginning of the 90's, Radio Television libre des milles collines (RTLM) was founded, which proposed anti-Tutsi propaganda, jokes and obscene jokes⁴⁶. A study attributed 10% of deaths during the genocide to this radio.⁴⁷ Later, RTLM, will be prosecuted in ICTR in Arusha in the so-called Media-Trial. In April 1994, the Hutu leaders began to put into the hands of the Interahamwe militia AK-47 and other weapons heavier than the previously distributed machetes.

The UN had established the mission to Rwanda in order to control the implementation of the Arusha accords. The commander in chief was the Canadian General Romeo Dallaire. He started to understand at the beginning of 1994 that there was something weird when a French DC-8 aircraft landed in Kigali with weapons for the FAR (Hutu army). Dallaire notified it to the UN suggesting that to prevent an escalation of violence he had to seize these weapons. The UN deemed this action beyond the UN mandate⁴⁸.

⁴⁰ Prunier, Gérard (1995). *The Rwanda Crisis, 1959–1994: History of a Genocide* (1st ed.). London: C. Hurst & Co. Publishers (pag.247)

⁴¹ Nowrojee, Binaifer (1996). *Shattered Lives: Sexual Violence during the Rwandan Genocide and its After*. New York: Human Rights Watch

⁴² Prunier, Gérard (1999). *The Rwanda Crisis: History of a Genocide* (2nd ed.). Kampala: Fountain Publishers Limited (p.169)

⁴³ Melvern, Linda (2004). *Conspiracy to Murder: The Rwandan Genocide*. London and New York (p.20)

⁴⁴ Melvern, Linda (2000). *A people betrayed: the role of the West in Rwanda's genocide* (8, illustrated, reprint ed.). London; New York: Zed Books. (p. 31-32)

⁴⁵ Prunier, Gérard (1999). *The Rwanda Crisis: History of a Genocide* (2nd ed.). Kampala: Fountain Publishers Limited (p. 182)

⁴⁶ Ibid

⁴⁷ Yanagizawa-Drott, David (1 November 2014). "Propaganda and Conflict: Evidence from the Rwandan Genocide". *The Quarterly Journal of Economics*. 129 (4): 1947–1994

⁴⁸ Dallaire, Romeo (2004). *Shake hands with the devil : the failure of humanity in Rwanda* (Vintage Canada ed.). Vintage Canada.

As mentioned earlier, on January 11, General Dallaire, commander of UNAMIR, sent the famous "GENOCIDE FAX" to UN headquarters⁴⁹.

Dallaire said in his fax that he was in contact with "a top-level trainer in the cadre of Interhamwe-armed militia of MRND" (a.k.a. Jean-Pierre) who had confided to him that they were preparing the massacre. Jean-Pierre himself was preparing the lists. The text states that the militia was capable of killing 1000 people every 20 minutes⁵⁰. Dallaire's request to protect his informant and seize the weapons was rejected⁵¹.

OUTGOING CODE CABLE

JAN 11 1994

DATE: 11 JANUARY 1994 *HR 47*

TO: BARIL/DPKO/UNATIONS NEW YORK	FROM: DALLAIRE/UNAMIR/KIGALI
FAX NO: MOST IMMEDIATE-CODE CABLE-212-961-4952 INDARSAT:	FAX NO: 011-250-84273
SUBJECT: REQUEST FOR PROTECTION FOR INFORMANT	
ATTN: MGEN BARIL	ROOM NO. 2052
TOTAL NUMBER OF TRANSMITTED PAGES INCLUDING THIS ONE: 2	

1. FORCE COMMANDER PUT IN CONTACT WITH INFORMANT BY VERY VERY IMPORTANT GOVERNMENT POLITICIAN. INFORMANT IS A TOP LEVEL TRAINER IN THE CADRE OF INTERHAMWE-ARMED MILITIA OF MRND.
2. HE INFORMED US HE WAS IN CHARGE OF LAST SATURDAY'S DEMONSTRATIONS WHICH AIMS WERE TO TARGET DEPUTIES OF OPPOSITION PARTIES COMING TO CEREMONIES AND BELGIAN SOLDIERS. THEY HOPED TO PROVOKE THE RPF EN TO ENGAGE (BEING FIRED UPON) THE DEMONSTRATORS AND PROVOKE A CIVIL WAR. DEPUTIES WERE TO BE ASSASSINATED UPON ENTRY OR EXIT FROM PARLIAMENT. BELGIAN TROOPS WERE TO BE PROVOKED AND IF BELGIANS SOLDIERS RESORTED TO FORCE A NUMBER OF THEM WERE TO BE KILLED AND THUS GUARANTEE BELGIAN WITHDRAWAL FROM RWANDA.
3. INFORMANT CONFISHED 48 RPF PARA COO AND A FEW MEMBERS OF THE GENDARMERIE PARTICIPATED IN DEMONSTRATIONS IN PLAIN CLOTHES. ALSO AT LEAST ONE MINISTER OF THE MRND AND THE SOUS-PREFECT OF KIGALI WERE IN THE DEMONSTRATION. RPF AND INTERHAMWE PROVIDED RADIO COMMUNICATIONS.
4. INFORMANT IS A FORMER SECURITY MEMBER OF THE PRESIDENT. HE ALSO STATED HE IS PAID \$150,000 PER MONTH BY THE MRND PARTY TO TRAIN INTERHAMWE. DIRECT LINK IS TO CHIEF OF STAFF RPF AND PRESIDENT OF THE MRND FOR FINANCIAL AND MATERIAL SUPPORT.
5. INTERHAMWE HAS TRAINED 1700 MEN IN RPF MILITARY CAMPS OUTSIDE THE CAPITAL. THE 1700 ARE SCATTERED IN GROUPS OF 40 THROUGHOUT KIGALI. SINCE UNAMIR DEPLOYED HE HAS TRAINED 300 PERSONNEL IN THREE WEEK TRAINING SESSIONS AT RPF CAMPS. TRAINING

Figure 5 U.N. General Romeo Dallaire Fax scan

Upon Habyarimana's death, her direct successor should have been Prime Minister Agathe Uwilingiyimana, but the executive committee headed by Colonel Bagosora refused to appoint her as the new president even though she had Dallaire's support. The following day UNAMIR sent an escort of ten Belgian soldiers to the Prime Minister who was to speak to the nation from the offices of Radio

⁴⁹ Adams, Smin (21 January 2014). "The UN, Rwanda and the 'Genocide Fax' – 20 Years Later". Huffington Post. Archived from the original on 25 September 2015

⁵⁰ "The Rwanda "Genocide Fax": What We Know Now". National Security Archive. 9 January 2014. Archived from the original on 19 December 2018.

⁵¹ Dallaire, Roméo (2005). Shake Hands with the Devil: The Failure of Humanity in Rwanda. London: Arrow Books

Rwanda⁵². This was not possible because the presidential guards had taken control of the radio. In the afternoon the Prime Minister and the 10 Belgians were surrounded by a group of civilians and forced to lay down their weapons⁵³. The Prime Minister and her husband were killed, while their children were hidden and were then rescued by Senegalese UNAMIR officer Mbaye Diagne⁵⁴. The ten Belgian soldiers were taken to the Camp Kigali base, tortured and killed⁵⁵.

Years later, in 1998, the Belgian Senate will highlight the responsibilities of Dallaire stating that it “*did not understand why general Dallaire, who had noted the blue beret bodies in the Kigali camp, did not communicate this immediately to the FAR'S high-ranking officers at the meeting of the École supérieure and did not demand the urgent intervention of those Rwandan officers present. This appears to reflect considerable indifference on his part. Moreover, General Dallaire also neglected to inform his sector commander about what he had seen and to give the necessary instructions*”⁵⁶ Dallaire tried many times to establish a dialogue between the two forces but none of them wanted to stop the fight. One because they wanted to eliminate all the Tutsis and the other because wanted to protect them⁵⁷.

The genocide was organized by the Hutu elite and carried out by the Interahamwe and Impuzamugambi militias, although it should be noted that most of the killings were carried out by ordinary civilians outside the cities.

The large-scale ethnic-based killings began a few hours after the shooting down of the presidential plane⁵⁸⁵⁹. There are several different hypotheses regarding the death of Habyarimana. The most bizarre is probably that of the Belgian journalist Colette Braeckman who wrote that the president's plane had been shot down by two French soldiers of the DAMI, the military structure that France had not completely dismantled when they left in 1993⁶⁰. But she doesn't provide any reason why the French wished Habyarimana dead. Braeckman's hypothesis was dismissed also by the Prime

⁵² Dallaire, Roméo (2005). *Shake Hands with the Devil: The Failure of Humanity in Rwanda*. London: Arrow Books (p.230)

⁵³ Prunier, Gérard (1999). *The Rwanda Crisis: History of a Genocide* (2nd ed.). Kampala: Fountain Publishers Limited. (p.230)

⁵⁴ Dallaire, Roméo (2005). *Shake Hands with the Devil: The Failure of Humanity in Rwanda*. London: Arrow Books (p.245)

⁵⁵ Gourevitch, Philip (2000). *We Wish To Inform You That Tomorrow We Will Be Killed With Our Families* (Reprint ed.). London; New York: Picador.(P.114)

⁵⁶ Inquiry by Mr. Mahoux and Mr. Verhofstadt to the Belgian Senate, 6 December 1997, <https://www.senate.be/english/rwanda.html#4.11>

⁵⁷ *Shake hands with the devil: the failure of humanity in Rwanda*. Random House Canada

⁵⁸ James, Paul (2015). "Despite the Terrors of Typologies: The Importance of Understanding Categories of Difference and Identity". *Interventions: International Journal of Postcolonial Studies*

⁵⁹ Melvern, Linda (2004). *Conspiracy to Murder: The Rwandan Genocide*. London and New York: Verso (P. 165)

⁶⁰ Braeckman, Colette, "L'avion rwandais abattu par deux Français?", *Le Soir*, 17 June 1994. The author develops her point also in the book *Rwanda. Histoire d'un genocide*, Fayard, Paris 1994, pp. 188-97

Minister of Belgium in the day after⁶¹. Breackman reinforced her theory after the start of Operation Turquoise, saying that it was just a way to remove from the field all the proofs of French implication in the genocide⁶². Another truth is that at the time, no European government had any reason to want President Habyarimana dead. By the way, this does not invalidate the possibility that it was a white man who pulled the trigger, but surely not on behalf of a European country⁶³. Others believe that the plane was shot down by the RPF⁶⁴. After the reading of different sources, and different talks with people all over Rwanda, my personal idea is that the airplane was shot down by the Hutu Militia, that was only looking for a strong reason to start the genocide. They saw Habyarimana as a weak leader after the Arusha accords and wanted to give no political representation to the Tutsis. The crisis committee chaired by Bagosora took power and it was the authority that coordinated the genocide. The leaders of the 11 prefectures⁶⁵ into which the country was divided were called and they were told to begin operations. The most prepared were certainly those of the Gisenyi prefecture, where the commanders announced to the people that they had gathered to 'start work' and 'spare none'⁶⁶. The leaders of each prefecture spread the rumor that it was the RPF who killed Habyarimana. The Hutu people who had been armed and trained to use weapons in the previous months, were obedient to the orders of the authority and executed them without question⁶⁷.

On April 8, France and Belgium sent planes to Kigali for the evacuation of Westerners. Belgian soldiers also evacuated some Tutsis while the French took away many Hutu leaders and families. In the French embassy all the archives were quickly destroyed by order of the ambassador, Jean-Michel Marlaud. The embassy welcomed the Hutu political staff, while the Tutsis were abandoned to their fate.

The first in the lists were carefully selected. Genocidaires went straight in the houses of important people. Their aim was first to kill the leaders and then all the rest. After Prime Minister Uwilingimimana, the President of the Constitutional Court, Joseph Kavaruganda, was killed because of his liberal ideas and to stop any sort of constitutional succession⁶⁸. Charles Shamukiga, human rights activist, Landwald Ndasingwa leader of the democratic party, the Minister of the Agriculture

⁶¹ Jean-Luc Dehaene said none of the Belgian Commission's findings enabled it to say that French citizens had anything to do with the shooting down of the Presidential airplane

⁶² Prunier states that even if this theory looks absurd, it contains at least one element of truth. Between forty and seventy French military advisers did stay behind after December 1993 withdrawal of French forces to help the FAR in case of need (interview of French Cooperation Minister Michel Roussin on Radio France Internationale, SWB, 30 May 1994).

⁶³ Prunier, Gerard, *The Rwanda Crisis: History of a genocide*, Hurst & Co., London 1995, pp 215

⁶⁴ Uganda Democratic Coalition, *who are behind the Rwanda Crisis?* Langley Park, MD, 12 April 1994

⁶⁵ Melvern, Linda (2004). *Conspiracy to Murder: The Rwandan Genocide*. London and New York: Verso (P. 163)

⁶⁶ Melvern, Linda (2004). *Conspiracy to Murder: The Rwandan Genocide*. London and New York: Verso (P.164)

⁶⁷ Prunier, Gérard (1999). *The Rwanda Crisis: History of a Genocide* (2nd ed.). Kampala: Fountain Publishers Limited (p. 244-245)

⁶⁸ Prunier, Gerard, *The Rwanda Crisis: History of a genocide*, Hurst & Co., London 1995, pp 230

Frédéric Nzamurambaho and many others. But, although the target were high ranked politicians and liberal activists, the lists were long. Tutsis were killed just because they were Tutsis. Priests, nuns, also well-dressed people were killed, just because being well dressed was the symbol of liberal opinions. Interahamwe searched for his killers among the poorest people. For them, being a killer was the best thing ever happens, a sort of social revenge offered by the new leaders that doing it, were finally recognizing them. The Hutu militia in those days became the protagonists of the worst crimes, killings, gang-rapes. They brought back all the anger and personal frustration accumulated over the years on the Tutsis. Although the government had been Hutu for the last 35 years, the Tutsis, thanks to the elitist education given by the Belgians in the previous 40 years, were still able to hold the highest positions in public organizations, NGOs, economy and finance. Especially Kigali was a city ruled by the Hutus names but internally directed in every small part by the Tutsis.

On 9 April, Radio Rwanda announced the composition of the new government in which only five parties were represented. The answer of Major-General Paul Kagame arrived soon when he decided to renew hostilities. RPF troops invaded from the north but at the same time French Air Force planes landed at Kigali airport. The 2,500 UNAMIR troops were almost not able to protect themselves, so how they could protect other Europeans or the Tutsis?

The situation was terrible. France wanted to intervene militarily, but this could have been mistaken by the RPF. Belgium pushed the UN to change the mandate of UNAMIR and allow them to intervene. Belgium was ready to expand his military force but only under an UN mandate. Belgians tried to save as many as they could, but every bus or truck was stopped before arriving at the airport to be checked. Mixed couples were forced to divide, and it was tough even to bring on the plane children from mixed marriages. Rwandese were slaughtered under the eyes if the French and Belgians that had the order to not intervene. Professor Andre Guichaoua of Lille University had to distract the attention of the French officers in order to sneak the five children of the murdered Prime Minister Agathe Uwilingiyimana on board a Paris-bound aircraft after they had been refused political asylum⁶⁹.

It is remarkable the effort made by the missionary Marc Vaiter who during the whole battle of Kigali, managed to keep children both Tutsi and Hutu in his orphanage. He was able to not provide the ethnic lists to the militia of the children along all the battle⁷⁰.

Every prefecture received the list of Tutsis to be killed, and for this reason, the speed with which the massacres were carried out also depended on how the individual offices responded to the

⁶⁹ Interview of Gerard Prunier with Professor Guichaoua, Lille, 8 June 1994

⁷⁰ Peyrard, Michel, *Le SOS de Marc Vaiter*, Paris Match, 9 June 1994. He later published a memoir of the experience: “*Je n’ai pas pu les sauver tous*”, Plon, Paris 1995

orders. This created a big problem after the genocide for the new government. Every public office was filled with staff who had committed crimes against humanity.

The major actors in the genocide were ordinary farmers. The psychological factor was relevant. Over the years simple farmers had been indoctrinated and had been told for months the story of the feudal masters (Tutsis) who exploited the work of the farmers⁷¹. In some parts of the country ordinary people took up arms and killed entire Tutsi families without having received any specific orders, only for the mental washing that had been done previously.

A seventy-four-year-old farmer captured by the RPF admitted that the choice was either to take the machete and kill the Tutsi or to be killed as a deserter, knowing that he was committing unspeakable crimes that he would never forgive himself⁷². The historian Jean-Pierre Chretien calls these people 'victim-killers' or 'innocent murders'. Their guilt and the fact that they were aware of the crime while executing it will be one of the pillars around which the *Gacaca*⁷³ trials will revolve, which I will analyze in Chapter 2 and the role of memory and unquenchable guilt in Chapter 3. Of course, the economic factor also plays a fundamental role. The slaughterers killed Tutsis and their animals, from which they could get food, an element that was scarce in Rwanda at the time and not a little. And one of their hopes was that when the massacres ended, as the situation recovered, they could get the land of the people they killed.

What happened in Rwanda between April and July 1994 is not easily understood by people born and raised in a western country and who have never seen a live war. Some of the examples below are not intended to be sensationalist in character but try to make the reader understand why, at the end of the genocide, it was difficult if not impossible to ask the survivors to form a coalition government.

The number of deaths is always to be taken into account. Garbage trucks were used to move the bodies⁷⁴. In mid-May alone in Kigali there were 60,000 bodies piled up in the streets. The Kagera River was full of corpses⁷⁵. About 40,000 bodies arrived by the river's course on the banks of Lake Victoria in Uganda, where they were buried in mass graves. In Gisozi, where there is now the Genocide Memorial, 250,000 people are buried in a single grave. The Rwandan case is not comparable to that of the Jews because although the numbers are lower, the dynamics have been harsher. The use of the machete caused a slower and more painful death than the bullet. Those who had money paid their torturers to receive a bullet in the head rather than being hit repeatedly by a

⁷¹ For examples of this see Patrick Saint-Exupéry, Rwanda. Les assassins racontent leurs massacres", Le Figaro (29 June 1994), and African Rights, Rwanda:death, op. cit., p. 397.

⁷² Prunier, Gerard, *The Rwanda Crisis:History of a genocide*, Hurst & Co., London 1995, pp 248

⁷³ Trials of the village which sentenced more than one million cases in ten years. *Gacaca* in Kinyarwanda means 'grass'

⁷⁴ Médecins sans frontières, Bulletin (April 1994)

⁷⁵ Mari, Jean-Paul, Rwanda, Voyage au bout de l'horreur, Le nouvel observateur, 25 May 1994

*panga*⁷⁶. Violent sexual abuse was common at the end of which women were mutilated and killed. Children, some became killers and other victims, thrown alive into pit latrines⁷⁷. Mutilations as mentioned were common, both of penises and breasts. "Brutality here does not end with murder. At massacre sites, corpses, many of them those of children, have been methodically dismembered and the body parts stacked neatly in separate piles"⁷⁸.

On the campus of the University in Butare a Hutu teacher with a pregnant Tutsi wife saw her belly open with a machete and the fetus was smeared in his face screaming "eat your bastard"⁷⁹. Militiamen forced mothers to kill their children to avoid death. Family members were spared if they killed the rest of their family⁸⁰.

On April 11, the RPF troops, who had crossed north three days earlier, reached Kigali. Over the next three months, the troops besieged the capital with 15,000 men, about half the entire army. The RPF also managed to block the road from Kigali to Gitarama and with 5,000 men took control of the east of the country. Many foreign observers confused war with genocide, including the United Nations, which declared the need to "cease hostilities to stop the massacres," the two were unrelated⁸¹. Kagame's army was advancing and gathering new members who went to replenish the group of the Ugandan diaspora.

⁷⁶ United Nations, Human Rights Commission, Rapport sur la situation des Droit de l'Homme au Rwanda soumis par Mr Degni-Ségui, 28 June 1994, p. 9

⁷⁷ African Rights, Rwanda:Death, pp. 342-344

⁷⁸ The Economist, Rwanda: no end in sight, 23 April 1994

⁷⁹ Private interview reported by Gérard Prunier

⁸⁰ African Rights, Rwanda: Death, p.337

⁸¹ Burkhalter, Holly (director of Human Rights Watch), 'Make the Rwandan Killers' bosses halt this genocide', International Herald Tribune, 2 May 1994

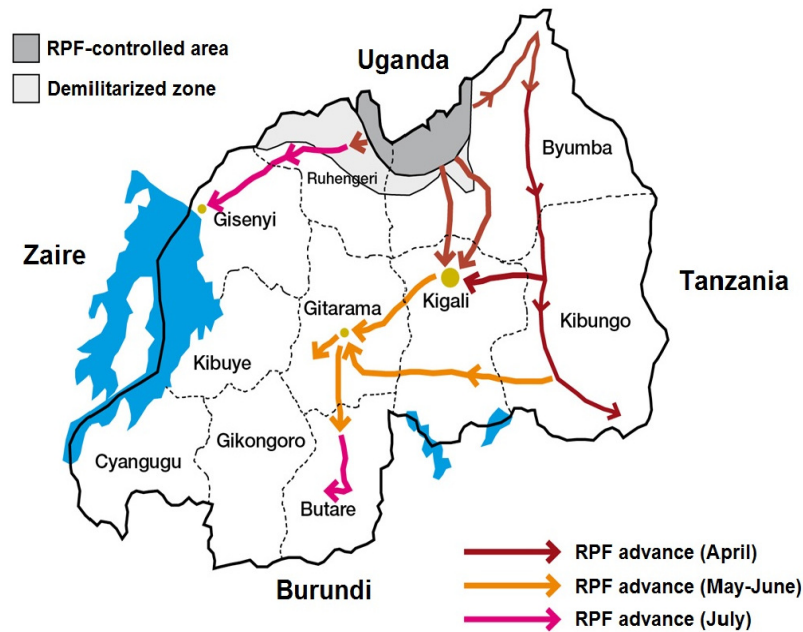


Figure 6 RPF advance during 1994⁸²

On June 6, the FAR tried to launch a counteroffensive that led to the conquest of Gitarama by the RPF. The interim government moved to Gisenyi.

Two days later, the French government announced that it would start a "humanitarian intervention" in Rwanda, the RPF interpreted this statement as wanting to save the old allies and declared: "After hundreds of thousands of innocent lives have been lost, the French government which is responsible for this loss of life now claims that it will send troops to stop the killings. The intention is clear: the French troops will come to protect the murderers"⁸³.

On April 21, France voted, at the Security Council, to reduce the number of blue helmets in Rwanda from 2700 to 450. Militiamen quickly understood that they had nothing to fear from these toy soldiers⁸⁴ and that they could commit the worst atrocities in their presence with total freedom from interference. Shortly afterwards, the French representative, Jean-Bertrand Mérimée, objected to the UNSC qualifying what is happening in Rwanda as "genocide".

On 29 April the Secretary-General of the United Nations Boutros-Ghali proposed to deploy a contingent of blue helmets. On 6 May, Resolution 918 was passed with 5,500 men under Chapter 7 of the UN charter, the operational chapter. The mission, however, would begin three months later with the usual timeliness that characterizes the United Nations.

Deputy Secretary-General Kofi Annan declared:

⁸² Map showing the advance of the RPF during the Rwandan Genocide of 1994. English language version of an existing German-language file based on info found in: Alan J. Kuperman: The limits of humanitarian intervention. Genocide in Rwanda, Brookings Institution Press, Washington, DC 2001, p. 43.

⁸³ SWB/Radio Muhabura, 16 June 1994

⁸⁴ Prunier, Gerard, *The Rwanda Crisis: History of a genocide*, Hurst & Co., London 1995, pp 275

"Nobody should feel he has a clear conscience in this business. If the pictures of tens of thousands of human bodies rotting and gnawed on by the dogs...do not wake us up out of our apathy, I don't know what will"⁸⁵ while Boutros-Ghali said: " We are all to be held accountable for this failure, all of us, the great power, African countries, the NGOs, the international community. It is a genocide, I have failed, It is a scandal"⁸⁶.

In the meanwhile, a delegation of high politicians from the Hutu Government (Foreign Minister Bicomumpaka and CDR leader Barayagwiza) was received officially in Paris by Mitterrand, Balladur and Juppé on April 27th.

On June 16, the FPR continued its advance and the army of Kagame conquered Gitarama. In the meantime, Alain Juppé, Minister of Foreign Affairs, publicly spoke of genocide in front of TV and announced the start of Operation *Turquoise*. Mitterrand's idea of sending paratroopers to Kigali was hindered by the National Defense Commission because it was politically and militarily inappropriate. But, the left and the right parties in France agreed for a military intervention in order "to save the people of Rwanda from the massacres" and in the meanwhile save their old allies, the ones which committed the massacres.

On June 23rd the French troops entered Rwanda from the south, near the Nyungwe forest and started the Operation *Turquoise*. In the first two weeks the French army created a "humanitarian safe zone" in the southwest, where the genocidaires and the other Hutus, fleeing from the north now controlled by the FPR, took refuge. The French opened a corridor for the Hutus to escape into Zaire. About 2 million people will flee in the first month and the first cholera epidemic broke out in the city of Goma. On July 17, the FPR finally conquered Gisenyi, the last city in the hands of the previous government and ended the war.

The FAR soldiers remained protected by the French army. Operation *Turquoise* was more a "saving friends" than a "stop the genocide" operation. General Augustin Bizimungu, one of the leaders of the genocidaires was seen fleeing aboard a French vehicle in Goma.

In the following months, France continued to support the Hutus, trying to hinder EU aid to the Kigali government, trying to reorganize the former FAR in Zaire and organizing secret meetings at the Elysium with Mobutu and Hutu representatives. At the same time, the French press, *Liberation* in particular, was hurling itself against the Tutsi government, proposing investigations into alleged massacres carried out by the Tutsis against the Hutus in Zaire and Rwanda.

⁸⁵ Le monde, 30 April 1994

⁸⁶ Le Monde 27 April 1994

The Aftermath

The refugee's problem will be a major cause for discussion in the international community in the months following the genocide. In Tanzania, Burundi, Zaire, hordes of refugees were arriving in search of assistance. The problem is that most of them were frightened Hutus, fleeing for the arrival of the RPF. They began to tell of a counter genocide that Kagame's troops were setting up. At least at first this hypothesis seemed at least absurd. In the refugee camps themselves, however, were the killers and the victims and the situation was destabilizing.

The refugee camps, especially those in Zaire, were controlled by the Hutus who perpetrated the genocide: they managed the resources, food and economic aid coming from UNHCR and other NGOs. Between 1994 and 1996, refugee camps on the border with Zaire collapsed. The camps were militarized by ex-FAR and outbreaks of cholera, diarrhea and meningitis broke out. 50,000 died in Goma alone. The camps were used as bases to launch attacks on the FPR government but were always rejected. The humanitarian situation, later known as the Great Lakes refugee crisis, was tragic. Israel sent the largest medical mission in its history and other states like Holland and France.

But the situation did not tend to improve. The former FAR elite distributed the food and there were those who had less than 2,000kcal per day and those who had up to 10,000. Those who rebelled against this system were systematically killed. The large international organizations, unable to control their humanitarian aid, decided to leave. They left the camps MSF, OXFAM, Save the children and CARE, which were among the best prepared to face such a mission. The UNHCR remained alone and could do little because military aid was almost non-existent.

“The country was devastated. It was full of bodies everywhere. The International Community aids to rebuild. The new interim government faced many problems: orphans, widows, raped women, houses destroyed, insecurity in some regions. The priority was security and the integration of orphans into families and society.”⁸⁷

In 1994, meanwhile, Kagame had formed a transitional government with a Hutu president, Bizimungu, in which he was the minister of defense and vice-president and in fact, the leader.

In Rwanda, however, the situation for the first two years was terrible. There was no money and the economy did not recover. The country was full of the living dead who had escaped genocide but no longer had a home or a job. They had lost their livestock and land and most important of all, they had probably seen their family exterminated before their eyes.

The Hutus continued with the story of the counter genocide perpetrated by the RPF. While it is true that the RPF was the protagonist of heinous murders, it is not certain that we can speak of a lack of

⁸⁷ Interview with Prof. Emmanuel Havugimana, University of Rwanda, 29 June, 2019

respect for human rights. Until 1996 the new government tried with all sorts of ways to improve the situation. But restarting a country that no longer had a workforce, whose fields and infrastructure were destroyed, was no easy task.

The government tried during this period to meet the requirements set by the World Bank to continue to have loans and boost the economy. But the situation was worse than expected. Those left in Rwanda were psychologically too traumatized to produce. There were 140,000 children who were not being cared for, Hutus who had supported the extermination and were afraid of being discovered, Hutus who had not supported the extermination but who had not even opposed it and who did not know where to stand. The only ones who helped the state economically and industrially were those who returned from the diaspora in Burundi and Uganda. They brought with them money and willingness to do. The European Union finally released a loan of 85 million and the economy slowly began to rebuild its basis.

The next chapter will deal with the reconstruction of the state in the aftermath of the genocide. Kagame will have control of the state and will lead its development since 1994 but only since 2000 as President. Discordant opinions hover over his work. Human rights activists condemn his choices and operations. But one thing is certain: the facts tell us that in 1994 Rwanda was the worst state in terms of health, education, law and infrastructure on the continent. Now, after 25 years, it is probably the best and its development does not stop. And Kagame must be given credit. To analyse all the developments I will use as references text by Phil Clark, Pietro Sullo, Payam Akhavan, Paul Bornkamm, Kingsley Moghalu and Oscar Kimanuka.

~ CHAPTER TWO ~

Post-genocide transitional Justice and the *Gacaca* courts

“The genocide was carried out in Kinyarwanda and therefore, the crimes were to be prosecuted in Kinyarwanda.”⁸⁸ (Isaie Nzeimana)

Introduction

Enough has been written and said about Rwanda. Political, economic, social and psychological studies have been produced on the causes and developments of the 1994 genocide. An attempt has been made to find a motivation, and in some cases even some plausible ones have been found. Justice, in different ways, has run its course between Nuremberg, Arusha and The Hague and as compensation of pain and crimes, the state of Israel, Serbia, Bosnia and Croatia were founded. Rwanda, however, remains a unique case in the matter, since the response given by the small African country was peculiar. As Halpern and Weinstein have made clear⁸⁹: *“Little attention has been paid to the fact that people who once saw each other as the enemy must learn to live together again on a daily basis – in shops, the market, the school, playgrounds, concerts. We know surprisingly little about how neighbors who have tortured neighbors, looted their homes or fired them from jobs can learn to live together again. It is the interpersonal ruins, rather than the ruined buildings and institutions that pose the greatest challenge for rebuilding society⁹⁰”*.

The aim of this second chapter will be to investigate how Rwanda has, especially since 2000, adopted the set of processes known as Transitional Justice. While the UN ICTR has been investigating the most important cases, Rwanda has set up *Gacaca* courts, Inganzo camps and other structures to allow the state and its population to rise again, after 30 years of massacres and 100 days of genocide. The new constitution was approved in 2003 and in the same year the first elections have been held

⁸⁸ Personal interview on July 16, 2019

⁸⁹ Clark J.N. , *The Cross, the Crescent, and the War in Bosnia: The Legacy of Religious Involvement*. In: Ramet S.P. (eds) *Religion and Politics in Post-Socialist Central and Southeastern Europe*. Palgrave Studies in Religion, Politics, and Policy. Palgrave Macmillan, London, 2014

⁹⁰ Halpern J. , Weinstein HM, ‘Empaty and Rehumanization after Mass Violence. In: *My neighbor, My Enemy: Justice and community in the aftermath of Mass Atrocity*, pp 303-22

since 1994. The constitution then underwent changes and adaptations until it reached the present-day text.

This chapter aims to answer legal and sociological questions applied to law and to try to answer the macro-demand to which this whole paper aims to give an answer. That is, to demonstrate whether the policies carried out in Rwanda in the last 20 years have led to real reconciliation and popular unity. The analysis carried out in this chapter has as its reference the texts of Phil Clark⁹¹ and Pietro Sullo⁹², both experts in the field, that for years studied the work of the *Gacaca* and more generally the transitional justice in post-conflict societies. Moreover, I will extensively use the Oxford Handbook of Comparative Constitutional law.

At the end of the genocide the situation in Rwanda was dramatic. The country had lost a large part of its main labour force, the men, who had killed or had been killed. A cholera epidemic hit the country and the refugee situation was out of control. The first years, from 1994 to 2000, mainly served to rebuild the basic structures of the country and only thanks to continued international aid was this possible. The situation in the small Rwanda must be acknowledged in a much larger context in which, between 1996 and 2002, the three Congo wars upset the ecosystem of the Great Lakes region. Rwanda, together with Uganda and Burundi supported the revolutionary Laurent Kabila in the first war to drive out the dictator Mobutu. Doing so, the Rwandan army entered Congo from Northern Kivu region in the city of Goma⁹³, packed with Hutu refugees escaped from the genocide, committing atrocious crimes against former rivals and forcing them to flee to the Western DRC. In the second Congo war, however, Kabila got rid of his allies who had not left the country in the meantime to exploit the gold, diamond and Coltan mines. Kabila armed the Interahamwe against the Tutsis in the region⁹⁴. The violence in DRC has left 4 million dead and about as many displaced persons on the ground⁹⁵.

⁹¹ Clark, P. (2010). *The Gacaca courts, post-genocide justice and reconciliation in Rwanda: Justice without lawyers*. New York, NY: Cambridge University Press

⁹² Sullo, P. *Beyond Genocide: Transitional Justice and Gacaca Courts in Rwanda*, International Criminal Justice Series 20, Berlin, 2018.

⁹³ See, for example, K. Halvorsen, 'Protection and Humanitarian Assistance in the Refugee Camps in Zaire: The Problem of Security' in Adelman and Suhrke, *The Path of a Genocide*, pp.307–20.

⁹⁴ For the most thorough analysis available of the second war in the DRC in 1998–9, see ICG, 'Scramble for the Congo: Anatomy of an Ugly War', New York: ICG, 20 December 2000.

⁹⁵ International Rescue Committee, 'Mortality in the Democratic Republic of the Congo', New York: IRC, December 2004. The IRC statistics were confirmed in B. Coghlan, R. Brennan, *et al.*, 'Mortality in the Democratic Republic of Congo: A Nationwide Survey', *The Lancet*, 367, 7 January 2006, pp.44–51.

In this regional context, the RPF government had to try to isolate the country and the population already economically and psychologically torn apart and rebuild everything from the bottom up.

On the sidelines of an interview Antoine Mugesera, former senator and one of the cadres in reconstruction told me: *“There were various problems. Building the government structure. The executive, judicial, parliamentary apparatus. Something credible had to be created. Bringing the refugees back was one of the main objectives. To discover the infiltrators and try them. To rebuild the economy, the government institutions. To form a unique people. To find the real criminals among the prisoners.”*

In the years between 1994 and 1996, the transitional government led by the RPF had brought about 120,000 people to justice who were to be tried. The United Nations only judged the main minds of the genocide but not all the perpetrators of crimes. The majority of the crimes were committed by ordinary people who killed their neighbors, friends and sometimes even relatives, and as it should have been, it was judged at the national level.

What is Transitional Justice?

Transitional justice refers to the ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response⁹⁶. Transitional justice is a set of methods through which communities that have suffered gross and systemic violations of fundamental human rights seek to distance themselves from that past and move forward in a manner consistent with the need for justice for those who have suffered⁹⁷. A 2004 Report of the UN Secretary-General to the Security Council uses the term ‘transitional justice’ as encompassing ‘the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses in order to ensure accountability, serve justice and achieve conciliation.’⁹⁸. The objective, then, is to repair and rebuild, within the confines of the rule of law. This is usually broken down into four obligations:

⁹⁶Definition of Transitional Justice, from <https://www.ictj.org/about/transitional-justice>

⁹⁷ See International Center for Transitional Justice, ‘What is Transitional Justice?’ (2010):

Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and to promote possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse.

⁹⁸ UN Secretary-General, ‘Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies’ (2004), UN Doc S/2004/616, para 8.

- 1) to tell the truth and distill an authoritative account of the history of the conflict;
- 2) to prosecute those responsible for the violations;
- 3) to offer reparations to the victims;
- 4) to conduct institutional reform to dismantle extant systems which promote the perpetration of abuse⁹⁹.

These four actions are state-driven and ‘official’, but their impetus is to affirm memory and reject denial or oblivion, and in that sense they nurture and reinforce other efforts by civil society and by the national culture to emphasize remembrance of human rights crimes as a means of ensuring non-repetition¹⁰⁰. Recent years have seen the expansion of the scope of activities associated with transitional justice, and many in the fields of development, conflict prevention, and post-conflict reconstruction have seen significant overlaps between their own areas of focus and issues located within the transitional framework¹⁰¹. Transitional justice was applied in many countries in the second half of the 20th century: Latin America states, former Yugoslavia, South Africa, Rwanda, Cambodia, but always in a different way, trying to make justice adhere as much as possible to the country to which it was applied and therefore to its traditions. In countries such as South Africa, Rwanda, Colombia, transitional justice had the task of reuniting the broken people and therefore had a double mission: to judge and reconcile. The aims of transitional justice will vary depending on the context, but these features are constant: the recognition of the dignity of individuals, the redress and acknowledgment of violations, and the aim to prevent them from happening again. Complementary aims may include: establishing accountable institutions and restoring confidence in them, making access to justice a reality for the most vulnerable in society in the aftermath of violations, ensuring that women and marginalized groups play an effective role in the pursuit of a just society, respect for the rule of law, facilitating peace processes and fostering durable resolution of conflicts, establishing a basis to address the underlying causes of conflict and marginalization, advancing the cause of reconciliation¹⁰².

Constitutionalism, reflects the doctrine of the limited power and as it will be used in the next chapter, refers specifically to the processes undertaken by a community to set forth a fundamental

⁹⁹ J. E. Méndez, ‘Accountability for Past Abuses’ (1997) 19 *Human Rights Quarterly* 255. On the rule of law more generally, see Chapter 10.

¹⁰⁰ J. E. Méndez, *Constitutionalism and Transitional Justice*, The Oxford Handbook of Comparative Constitutional Law, Michel Rosenfeld and Andrés Sajó, 2012.

¹⁰¹ See Pablo de Greiff and Alexander Mayer-Rieckh, *Justice as Prevention* (2006).

¹⁰² *Ibid*

law upon which all other laws will stand¹⁰³. While many of the actual means for fulfilling transitional justice obligations will fall under more specific laws or administrative decisions, constitutions born in the aftermath of conflict nevertheless bear the first steps towards building the institutions necessary to address the need to afford remedies for past abuse. These constitutions also contain a framework for the administration of transitional justice specific to that community's context and become the mandate against which the legitimacy of transitional justice mechanisms and initiatives will be measured. Indeed, the initiation of proceedings aimed at justice is often the first assertion of a newly constituted legal system and, as such, an important foundation for further legal and social development. Constitution making process and norms thus weave themselves intricately into the matrices of transitional justice, which are heavily influenced by evolving norms in international law, even though they have to be implemented domestically. This interaction between two normative frameworks and spheres of influence, one domestic, the other international, has become increasingly evident, highlighting the need for further examination.

The primary objective of a Transitional Justice policy is to end the culture of impunity and establish the rule of law in a context of democratic governance. The legal and human rights protection roots of transitional justice impute certain legal obligations on states undergoing transition. It challenges such societies to strive for a society where respect for human rights is a core and accountability is routinely practiced as the main goals. In the context of this goals, Transitional Justice aims at:

- Halting ongoing human rights abuses;
- Investigating past crimes;
- Identifying those who are responsible of human rights violations;
- Imposing sanctions on those accountable;
- Providing reparations to victims;
- Preventing future abuses;
- Security sector reform;
- Preserving and enhancing peace;
- Fostering individual and national reconciliation;

¹⁰³ For a general overview on the history and key concepts of constitutionalism and constitutional theory, see generally Francis D. Wormuth, *The Origins of Modern Constitutionalism* (1949); cf Laurence H. Tribe, *The Invisible Constitution* (2008).

In general, it is possible to identify the following broad goals that Transitional Justice seemed to seek in Rwanda:

- Truth telling;
- Providing victims, a public platform;
- Holding perpetrators accountable;
- Strengthening the rule of law;
- Providing victims with compensation;
- Promoting institutional reforms;

In the world we have seen different models of transitional justice. Between the 1980s and 1990s in Latin America, the Truth Commission of Central and South America investigated the crimes committed by the elite and granted amnesties in exchange for the truth.¹⁰⁴ The South African Truth and Reconciliation Commission (TRC) has also granted amnesty in exchange for the truth about the crimes committed against the black majority. In South Africa the TRC sought reconciliation as its primary objective and served as a model for future post-conflict commissions: Kenya, Nigeria, Sierra Leone, Timor-Leste. The ICTR statute also mentions: '*prosecution would contribute to the process of national reconciliation and to the restoration and maintenance of peace*'¹⁰⁵. When a state sets up a post-conflict commission, what is the aim of that body? To rehabilitate the killer? Simply to punish him? To answer to the people with moral obligations? How do you convince killers to admit their guilt?¹⁰⁶ In the negotiations that took place in Uganda in 2008 between the rebels and the government, a key point was what would happen to the rebels who turned themselves in. Would they receive amnesty, or would they be held accountable before the International Criminal Court?¹⁰⁷

In Rwanda, the main abuses were halted by the invasion of the RPF army from the north which stopped the genocide. Little has been done by foreign powers, as we saw in Chapter 1, particularly France and the UN. Thinking minds have been brought to international justice by the ICTR partly from Rwanda, others from the states to which they fled by extradition, others are still at large in France and Belgium. The *Gacaca* system has largely provided for the sanctions and reimbursement

¹⁰⁴ P. Hayner, 'Fifteen Truth Commissions: 1974–1994 – A Comparative Study', *Human Rights Quarterly*, 16, 4, November 1994, pp.613–14, 621–3, 628–9, 653–5.

¹⁰⁵ United Nations, 'Statute of the International Criminal Tribunal for Rwanda', www.un.org/icttr/statute.html.

¹⁰⁶ P. Hayner, 'Fifteen Truth Commissions', pp.613–14, 621–3, 628–9, 653–5.

¹⁰⁷ For a lengthy discussion of these themes, see N. Waddell and P. Clark (eds.), *Courting Conflict: Justice, Peace and the ICC in Africa*, London: Royal African Society, 2008.

of the victims. Since 2000, the state has officially supported the new constitution, and since 2003 it has also been promoting reforms, peace and national unity.

The *Gacaca* Courts: implementation and trials

*“The genocide was carried out in Kinyarwanda and therefore the crimes were to be prosecuted in Kinyarwanda. Everyday terms were used in the Gacaca so that everyone could really understand. The law that Europeans brought us would not have been able to explain the genocide, it can only help to condemn the main minds of the genocide, as it did in the ICTR.”*¹⁰⁸ (Isaie Nzeimana)

After 1994 genocide against Tutsi in Rwanda, two forms of redistributive justice were adopted. The international community established the International Criminal Tribunal for Rwanda (ICTR)¹⁰⁹ to prosecute the key players in the genocide, and at the national level, *Gacaca* courts were set up by the Rwandan Government to try those under suspicion of the 1994 genocide. Due to the extreme number of suspects, approximately 120,000 people were in prison. The Government adopted a traditional, community-based conflict resolution mechanism, *Gacaca*¹¹⁰. In the past, before colonization, the smallest unit in society was the group of family (*umuryango*), which included several families (*inzu*). The importance within the family was dictated by age and gender. The king (*mwami*) was the most important person in the community both for his status and for his wisdom which allowed him to be the judge in the most important disputes. In order not to always question the king, however, in case of minor disputes, the wise men of the village were relied upon. The name *Gacaca* derives from *umucaca*, a plant so soft that it allowed people to sit on it to gather. *Gacaca* gatherings were therefore used to restore order and justice in the community but the arrival of the colonizers and the European legal systems made the *Gacaca* lose importance¹¹¹.

In the policies put in place for reconciliation and the re-establishment of the rule of law in the country, the Rwandan Government has drawn on its traditions. It has therefore set up the *Ingando*, *Itorero*, *Ubusabane* and *Ubudehe*, all programs and institutions which we will analyse later. But the most noteworthy and internationally significant initiative were the *Gacaca* courts, founded to try suspected genocide suspects. The *Gacaca* over ten years have sentenced more than 1.2 million

¹⁰⁸ Interview on July 16 2019

¹⁰⁹ UN Security Council resolution 955, Nov. 8, 1994

¹¹⁰ Organic Law n. 40/2000 OF 26TH January 2001, governing the creation of *Gacaca* Courts

¹¹¹ Ingelaere, Bert (2008). "Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences" (PDF). *International Institute for Democracy and Electoral Assistance 2008*.

cases.¹¹² At the end of the genocide, many people were incarcerated. At the end of October 1994, the number was 86,200 prisoners in 19 prisons¹¹³¹¹⁴. The number rose to 125,000 in 1998¹¹⁵. By the end of the genocide of the 758 judges there were only 244 left and only 12 prosecutors. Despite these staff shortages, the trials had to begin. The challenge was to punish all crimes and reconcile the population simultaneously. The first Genocide Act was published in 1996 and created special courts of first instance and military courts to review genocide cases. Categorization of crimes and admission of guilt were introduced, two of the bases on which the following 15 years of trials would be based. By the end of 1999, 1,801 cases had been examined.¹¹⁶ At this rate it would have taken 200 years to go through them all. Moreover, confidence in the legal system was low¹¹⁷. Continuing with regular courts was no longer an option. But neither was amnesty. The slow ICTR has examined 70 cases in 15 years. At that rate it would have taken more than 15,000 years to judge them all. The other problem with the ICTR was that it was in Tanzania and that the trials were held in a language that most Rwandans did not understand. In the past *Gacaca* had been considered from the outset to analyse crimes against property but never as a means of judging major crimes. It was not until after 1999 that the idea of using the *Gacaca* to try genocide suspects took hold. A means was sought through which ordinary people could have justice and participate. Justice is usually done for the people and in the name of the people, who know the truth about what happened."¹¹⁸ The possibility of using this rural justice was discussed at length in the president's office and in the margins of the report drawn up after the meetings you can read about it:

“Regarding the offences of genocide and massacres, they were committed in public, by many people, in the people’s eyes. So, it would be better if those offences were tried in public, the people participating in prosecuting and punishing those who committed them. Those who committed the crime

¹¹² R. Haveman, ‘*Gacaca* in Rwanda: Customary Law in Case of Genocide’, in Jeanmarie Fenrich, Paolo Galizzi & Tracy Higgins (eds.), *The Future of African Customary Law*, 2011, pp. 387-420

¹¹³ Report of the U.N. Human Rights Field Operation in Rwanda (HRFOR), noted in U.N. Office for the Coordination of Humanitarian Affairs, Integrated Regional Information Network (IRIN), Emergency Update No. 56 on the Great Lakes, 13 December 1996

¹¹⁴ S. Vandeginste, Justice, Reconciliation and Reparation After Genocide and Crimes Against Humanity: The Proposed Establishment of Popular *Gacaca* Tribunals in Rwanda, All-African Conference on African Principles of Conflict Resolution and Reconciliation, Addis Ababa, 8-12 November 1999

¹¹⁵ U.N. Econ. & Soc. Council, Commission on Human Rights, Report on the Situation of Human Rights in Rwanda Submitted by the Special Representative, Mr. Michel Moussali, Pursuant to Resolution 1998/69, 28, U.N. Doc. E/CN.4/1999/33 (Feb. 8, 1999)

¹¹⁶ S. Vandeginste, Justice, Reconciliation and Reparation After Genocide and Crimes Against Humanity

¹¹⁷ Office of the President, Report on the Reflection Meetings Held in the Office of the President of the Republic from May 1998 to March 1999 (Detailed document), pp. 67-74 (August 1999)

¹¹⁸ Office of the President, Report on the Reflection Meetings Held in the Office of the President of the Republic from May 1998 to March 1999 (Detailed document), 1999, p. 51

together being tried and punished together. In this new justice, in which the people actively participate, leaders must not leave it to the people alone. Leaders know how people were killed and properties spoiled, and they should participate in helping to search for crimes and their perpetrators, punishing the perpetrators, thus being an example, which will be followed by other people.”¹¹⁹

Transitional justice investigates the forms and structures with which a country has responded to a period of war or crisis. It sets goals to be achieved and how to do it ¹²⁰. Analyzing *Gacaca*, however, it is necessary to understand how the participants interpreted the objectives, what they expected to achieve and whether they were generally satisfied with it. ¹²¹. The *Gacaca* Courts were formed by Law No. 40/2000 of 26/01/2001. This law is composed of 100 articles that regulate every aspect of the courts in detail: the conduct of trials, the choice of judges and penalties. For example, according to article 39 of the *Gacaca* law, the courts have a number of powers to use to achieve their purpose:

- Summon any person to appear in a trial;
- Order and carry out a search of the defendant. This search must respect the defendant’s private property and basic human rights;
- Take temporary protective measures against the property of those accused of genocide crimes;
- Pronounce sentences and order the convicted person to compensate;
- Order the withdrawal of the distraint for the acquitted person’s property;
- Prosecute and punish troublemakers in the court;
- Summon the Public Prosecution to give explanatory information on files it has investigated;
- Issue summons to the alleged authors of offences and order detention or release on parole, if necessary.

Goals of *Gacaca*

Longman, in its “Justice at the Grassroots?” states that the formal approach of human rights critiques and their insistence on a catalogue of requirements modelled upon western-style court fails

¹¹⁹ Office of the President, Report on the Reflection Meetings, p. 51-52

¹²⁰ For an example of a model that tends towards this template approach, see International Center for Transitional Justice, ‘What is Transitional Justice?’, www.ictj.org/en/tj.

¹²¹ Clark, P., *The Gacaca courts, post-genocide justice and reconciliation in Rwanda: Justice without lawyers*. New York, NY: Cambridge University Press, 2010

to take into account the distinctive nature of customary legal systems and ultimately challenges the idea of universality of human rights¹²². On the other hand, HRW and AI have been critical for the one-size-fits-all approach used in the *Gacaca* courts. For example, many human rights NGOs have criticized the vulnerability of *Gacaca* judges. With regard to this, it is very difficult to indicate how much the judges may have been influenced by the government or economically corrupt. It is necessary to take into account the local reality to analyze the situation: most of the judges were farmers who, in the two days a week when they had to be judges, could not earn the little money they needed for subsistence. The lack of compensation for their work made some judges prone to corruption. But proving this remains impossible, just as impossible is proving their impartiality. Almost every person had played a role in the genocide whether they were victim or killer. It is enough to say that 30% of the judges, around 45,000, had been replaced in the first three years for charges against them during the period of genocide.

Each process, however, held in Rwanda, must respect 2 international conventions to which the country is a signatory, namely the ICCPR¹²³ and the Banjul Charter¹²⁴. In addition to these, the Rwandan constitution also guarantees a fair trial. To ensure the impartiality of judges, in addition to Article 14 of the ICCPR, the *Gacaca* law in Articles 14, 15, 16, provides that any judge 'must be respected and respected in the community, must not bear grudges and genocidal ideas, and must not have official positions in the government'. Article 30 provides for sanctions for those who exert any kind of pressure on judges. Phil Clark, in analyzing the *Gacaca* method, took into account six parameters and objectives that the courts set out to achieve: Truth, Peace, Justice, Healing, Forgiveness and Reconciliation. I will now try to enunciate the characteristics and the necessary fulfilments of each one:

Truth: when analyzing a transitional justice process you have to consider whether you are looking for justice or truth.¹²⁵ In Latin America, for example, an attempt has been made to construct an official truth, after hearing thousands of heads¹²⁶. There are therefore three processes to get to the truth: 'truth-telling', that is, telling the truth using legal evidence; 'truth-hearing', in which one usually talks and is

¹²² T. Longman, 'Justice at the grassroots?' in N. Roth-Arriaza and J. Mariezcurrena, *Transitional Justice in the Twenty-First century*, 2006.

¹²³ Full covenant text: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹²⁴ Full charter text: <https://www.achpr.org/legalinstruments/detail?id=49>

¹²⁵ For further discussion of the tensions between truth and justice, see A. Gutmann and D. Thompson, 'The Moral Foundations of Truth Commissions', in R. Rotberg and D. Thompson (eds.), *Truth v. Justice: The Morality of Truth Commissions*, Princeton, NJ: Princeton University Press, 2000, pp.22–44.

¹²⁶ See, for example, D. Bronkhorst, *Truth and Reconciliation: Obstacles and Opportunities for Human Rights*, Amsterdam: AI, 1995, pp.15–28, 74–6.

heard by a judge, very common in post-conflict situations; 'truth-shaping', that is, the truth-telling used later by political leaders to create consensus and memory¹²⁷.

Peace: both *gacaca* and ICTR aimed at peace through dissuading. The Rwandan problem arose from the fact that past leaders enjoyed impunity for their crimes and were not held directly responsible for them. *Gacaca* tried to distort this culture of impunity also thanks to the UN Peace operation and other initiatives put in place by the big institutions.¹²⁸ Moreover the UN states that 'in the aftermath of conflict, identifying and supporting measures and structures which will solidify peace and build trust and interaction among former enemies, in order to avoid a relapse into conflict'¹²⁹. The big work done by the UN enables to avoid what David Crocker defines 'temptation in post-conflict or post-authoritarian societies to permit euphoria to pre-empt the hard work needed to remove the fundamental causes of injustice and guard against their repetition'¹³⁰.

Justice: certainly, plays a central role in this analysis. Post-conflict justice can be divided into redistributive, deterrent and restorative. The first implies that the guilty are punished and given the punishment they deserve. In addition, redistributive justice allows some states to respect the international conventions they have signed.¹³¹ The deterrent says that the punishment is not only to punish but also to discourage future criminals. The restorative one says that punishment alone is insufficient. The punishment must be accompanied by a trial that leads victims and executioners to rebuild a relationship. Gerry Johnstone describes restorative justice as a new approach that: '*revolves around the idea that crime is, in essence, a violation of a person by another person (rather than a violation of legal rules); that in responding to a crime our primary concerns should be to make offenders aware of the harm they have caused, to get them to understand and meet their liability to repair such harm, and to ensure that further offences are prevented; that the form and amount of reparation from the offender to the victim and the measures to be taken to prevent reoffending should be decided collectively by offenders, victims and members of their communities through constructive dialogue in an informal and consensual process; and that efforts should be made to improve the relationship between the offender and victim and to reintegrate the offender into the lawabiding*

¹²⁷ The differences are well analyzed by Clark at page 34.

¹²⁸ UN, 'Report of the Panel on United Nations Peace Operations', UN Doc. A/55/305-S/2000/809, 21 August 2000, p.3.

¹²⁹ UN, 'Glossary of UN Peacekeeping Terms', www.un.org/en/peacekeeping/sites/glossary/p.htm

¹³⁰ D. Crocker, 'Truth Commissions, Transitional Justice and Civil Society', in Rotberg and Thompson, *Truth v. Justice*, p.107.

¹³¹ See, for example, D. Orentlicher, 'Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime', *New York Law Journal*, 100, 8, June 1991, pp.2562–8.

community'. That was one of the main goals of *gacaca*. To bring the victim and the perpetrator back to live in the same community.

Healing: in post-genocide Rwanda almost, everyone had been traumatized. Who physical, who moral, who had lost a relative or friend¹³². The reactions were different and often destructive, leading victims of rape and violence to commit suicide. The concept of healing was introduced by the TRC and more specifically by the Anglican Archbishop Desmond Tutu, who stressed the importance of truth, forgiveness and common healing in the daily conduct of the TRC.¹³³ Mamdani argues that, in the Rwandan case, a Hutu self-view of victimhood, particularly in the twentieth century, provided an emotional and psychological foundation for Hutu violence against Tutsi, as Hutu attempted to overcome their victim status and gain a greater sense of empowerment¹³⁴. Finally, healing presupposes that the victims re-humanize, and the perpetrators get rid of the negative identity they had assumed during the conflict¹³⁵.

Forgiveness: Some critics believe that forgiveness implies that the executioner does not receive the appropriate punishment and that therefore the distribution justice criteria listed above cannot be applied. In addition, forgiveness implies that the survivors who have suffered pain and loss often overcame the pain too quickly¹³⁶. Therefore, forgiveness is often considered emotionally too expensive in contexts such as Rwanda. Hannah Arendt argues that *“forgiveness is the exact opposite of vengeance, which acts in the form of reacting against an original trespassing, whereby far from putting an end to the consequences of the first misdeed, everybody remains bound to the process”*¹³⁷. Forgiveness does not imply forgetting “giving up”, “turning the other cheek” or “letting the other off the hook”, argues Wendy Lambourne, but rather should be seen as a ‘complex act of consciousness’ that overcomes injury in order to restore lost relationships¹³⁸. Forgiveness does not imply the

¹³² L.A. Pearlman, ‘Psychological Trauma’, lecture for ‘Healing, Forgiving, and Reconciliation’ project, John Templeton Foundation, West Conshohocken, Pennsylvania, 13 March 2000, copy on file with author; N. Munyandamutsa, *Question du sens et des repères dans le trauma- tisme psychique: réflexions autour de l’observation clinique d’enfants et d’adolescents survivants du génocide Rwandais de 1994*, Geneva: Editions Médecine et Hygiène, 2001.

¹³³ D. Tutu, *No Future without Forgiveness*, New York: Doubleday, 1999, chs. 6, 7, 10 and 11.

¹³⁴ M. Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*, Princeton, NJ: Princeton University Press, 2001, chs. 4, 5 and 7.

¹³⁵ Clark, P. (2010). *The Gacaca courts, post-genocide justice and reconciliation in Rwanda: Justice without lawyers*. New York, NY: Cambridge University Press

¹³⁶ See, for example, these two main criticisms of notions of forgiveness after the Rwandan genocide by genocide survivor Jean Baptiste Kayigamba in ‘Without Justice, No Reconciliation: A Survivor’s Experience’, in P. Clark and Z.D. Kaufman (eds.), *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond*, London: Hurst & Co. Publishers, 2009, pp.33–42.

¹³⁷ H. Arendt, *The Human Condition*, Chicago, Ill.: University of Chicago Press, 1958, p.241.

¹³⁸ W. Lambourne, ‘The Pursuit of Justice and Reconciliation: Responding to Genocide in Cambodia and Rwanda’, *Columbia International Affairs Online*, June 1999, www.ciaonet.org/isa/law01, p.4.

beginning of an association between the victim and the perpetrator. The victim may still be traumatized and afraid. Forgiveness only highlights the condition in which the victim has no intention of direct revenge, provided that justice is done, and the sentence is certain.

Reconciliation: Understanding whether or not there has been real reconciliation in Rwanda is one of the tasks of this study. Reconciliation requires much more than peaceful coexistence. Understanding reconciliation means understanding the very meaning of relationships. It is both a process and a point of arrival that requires individuals to cooperate for the development of society itself. Reconciliation looks at both the past and the present and includes two situations: peace and healing. It is much more than overcoming trauma, it is the search for a new relationship between victims and perpetrators. The victimized individuals may need a long time before they can embark on such a process and they will need to have passed the previous 5 points.

How the trials actually worked

How to organize the functions of *Gacaca* has been analyzed for about two years until the introduction in 2001 of 6 new laws defining the system.¹³⁹ The importance of seeking sources of law and indigenous solutions should not be underestimated. This sentiment is to be found in the bitterness that the international community's abandonment has left in the Rwandan people, who have therefore preferred not to adopt 'Western' measures. More than 12,000 *Gacaca* were established in the country with about 250,000 'judges', so-called *Inyangamugayo* which means people of integrity in the village. The pilot project started in June 2002 with 751 *Gacaca* and the judging phase in March 2005. The real trials started in mid-2006.¹⁴⁰ There were three categories of crime¹⁴¹:

Category 1

¹³⁹ Organic Law No. 16/2004 of 16/06/2004 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 October 1, 1990 and December 31, 1994, Official Gazette, No. Special of 19 June 2004, as amended by Organic Law No. 28/2006 of 27/06/2006, Official Gazette, No. Special of 12 July 2006; Organic Law No. 10/2007 of 01/03/2007, Official Gazette No. 5 of 1 March 2007 and Organic Law No. 13/2008 of 19/05/2008, Official Gazette No. 11 of 1 June 2008. These laws together are the revised version of the Organic Law N° 40/2000 of 26/01/2001 Setting Up "*Gacaca* Jurisdictions" and Organising Prosecutions for Offenses Constituting the Crime of Genocide or Crimes Against Humanity, Committed Between Oct. 1, 1990 and Dec. 31, 1994, and the Organic Law N° 33/2001 of 22/6/2001 Modifying and Completing Organic Law N° 40/2000 of 26/01/2001, two of these laws in their turn were an amendment to the Organic Law N° 08/96 of 30/08/1996 on the Organization of Prosecutions [in regular courts] for Offenses Constituting the Crime of Genocide or Crimes Against Humanity Committed since Oct. 1, 1990

¹⁴⁰ SNJG, Report on Data Collection, available at <http://www.inkikogacaca.gov.rw/pdf/ikusanya%20english.pdf>

¹⁴¹ Article 9, Organic Law N° 13/2008 of 19/05/2008. Initially there were four categories, see Article 51, Organic Law N° 40/2000 of 26/01/2001. These four categories have been refined and reduced to three by, broadly speaking, combining the initial second and third categories

- any person who committed or was an accomplice in the commission of an offence that puts him or her in the category of planners or organizers of the genocide or crimes against humanity;
- any person who was at a national leadership level and that of the prefecture level: public administration, political parties, army, gendarmerie, religious denominations or in a militia group, and committed crimes of genocide or crimes against humanity or encouraged others to participate in such crimes, together with his or her accomplice;
- any person who committed or was an accomplice in the commission of an offence that puts him or her among the category of people who incited, supervised and ringleaders of the genocide or crimes against humanity;
- any person who was at the leadership level at the sub-prefecture and commune: public administration, political parties, army, gendarmerie, communal police, religious denominations or in a militia, who committed any crimes of genocide or other crimes against humanity or encouraged others to commit similar offences, together with his or her accomplice;
- any person who committed the offence of rape or sexual torture, together with his or her accomplice.

Category 2

- a notorious murderer who distinguished himself or herself in his or her location or wherever he or she passed due to the zeal and cruelty employed, together with his or her accomplice;
- any person who tortured another even though such torture did not result in death, together with his or her accomplice;
- any person who committed a de-humanizing act on a dead body, together with his or her accomplice;
- any person who committed or is an accomplice in the commission of an offence that puts him or her on the list of people who killed or attacked others resulting in death, together with his or her accomplice;
- any person who injured or attacked another with the intention to kill but such intention was not fulfilled, together with his or her accomplice;
- any person who committed or aided another to commit an offence against another without intention to kill, together with his or her accomplice.

Category 3

- A person who only committed an offence related to property. However, when the offender and the victim come to a settlement by themselves, settle the matter before the authorities or before the witnesses before commencement of this law, the offender shall not be prosecuted.

In July 2011 1,237,356 cases had been judged. 15,263 in the first category, 383,118 in the second and 838,975 in the third.

This scheme has been elaborated by Phil Clark after his research on *Gacaca* and shows the differences between the three categories.

Judgment category	Guilty with no confession	Guilty with confession during trial	Guilty with confession before trial	Minors (14 to 18 years old) when offence committed
1	Life imprisonment with special provision	25-30 year prison term: possibility of commuting half to community service	20-4 year prison term: possibility of commuting half to community service	10-20 year prison term if guilty without confession; 8-9 years prison term following confession during trial; 7-7 year prison term following confession before trial
2	10-15 year prison term	6.5-7.5 year prison term; possibility of commuting half to community service and having one-third suspended	6-7 year prison term; possibility of commuting half to community service and having one-third suspended	10-15 year prison term if guilty without confession; otherwise, half of adult sentence; possibility of commuting half to community

				service and having one-third suspended, except when no confession is made
2 (no intention to kill)	5-7 year prison term; possibility of commuting half to community service	3-5 year prison term; possibility of commuting half to community service and having one-third suspended	1-3 year prison term; possibility of commuting half to community service and having one-third suspended	Half of adult sentence; possibility of commuting half to community service
3	Reparations for damage caused or equivalent community service			

Starting in 2001, the *Gacaca* analyzed almost a million cases. Phil Clark, the leading expert on the subject, has dedicated most of his scientific career to the subject and tells them the beginning of a classic *Gacaca* trial. I believe it is very important to read how everything was organized to better understand the context:

“In a Rwandan village near the Burundi border, a crowd chatters impatiently beneath a tattered blue tarpaulin shielding them from the midday sun. Before them on a long, wooden bench sit nine elders, mostly middle-aged men and women, led by a young man – the president of the panel – who stands and addresses the gathering. The president explains that in their midst today is a prisoner, released from jail a week ago, who has confessed to committing crimes during the 1994 Rwandan genocide, which in a little over three months claimed the lives of between 500,000 and 1 million Tutsi and their perceived Hutu and Twa sympathizers. The task of this gathering, the president explains, is to listen to anyone from the village who saw what this prisoner did, to hear from the victims’ families of their pain after

losing loved ones during the genocide, and for the nine judges – who have been elected by the community for their wisdom, love of truth and justice and dedication to the well-being of the village – to decide the case of the accused. The president calls for a minute's silence in memory of those killed during the genocide and then, after reading a list of procedures that will guide the running of today's meeting, he motions the prisoner forward to address the assembly.

A murmur goes through the gathering as the prisoner walks to the front, standing between the crowd and the line of judges. He mumbles and the president tells him to speak up. The man, with head bowed, explains that he has come to confess that he killed the wife of his neighbour in the first week of May 1994. He found the woman hiding in bushes as gangs of killers walked the paths of the village searching for Tutsi. When he found her, she was crying, screaming at him to let her go. He pulled her out of the bushes and threw her to the ground, then slashed his machete once across her neck, then again, and left her to die. The prisoner, head still bowed, says that he has come today to apologise for what he did. When he was in jail, he had many years to think about his actions, and his conscience was so heavy that he confessed his crimes to the authorities.

A pause, and then the president asks the assembly if this man's testimony is true and complete. The crowd remains silent. Eventually one man at the back stands and says that, yes, it is true that this prisoner killed the woman. But what he has not told the assembly is that the following day he also killed the woman's son with a machete and threw the body in a pit latrine. Another woman stands and says that she too saw the prisoner kill the boy. The president asks the prisoner to respond to these new accusations. The man raises his head slightly and says that it is not true that he killed his neighbour's son; when he received word that the boy was dead, he himself was miles away on the road to Kigali, where he had fled in shame after murdering his neighbour's wife. Voices clamour in the crowd: 'He's lying – I saw him in the village on the day the boy was killed.' 'I saw him too – he spoke to my wife in the courtyard that afternoon'. 'And he killed others – more than the woman and the boy.'

The president asks for calm and for each person in the assembly who wishes to speak to do so one at a time. People start to cry. The judges seated on the bench

scrawl in the notepads on their laps. In one week, they will have to decide what crimes the man committed during the genocide and what punishment he should receive. When this case is decided, there will be more cases, more stories of pain and loss, more claims and counterclaims, more details to verify, more decisions.”

Initially the *Gacaca* were studied in pilot phase and only since 2005 they were extended nationwide. The creation of the *Gacaca* was fundamental to rebuild the social fabric and to start the path of reconciliation and peace in the country. Rwanda has not followed the Western model where the goal of the process is punishment but has sought readmission into the village life of the individual and reconciliation. The desire to make peace between the victim and the perpetrator has been the guiding thread of the policy pursued by the Rwandan Government over the past 20 years. In 2001, more than 250,000 judges were elected as 'elders' by their communities in 11,000 jurisdictions¹⁴². The twofold objective that the *Gacaca* were aiming for was to pursue the killers and rebuild society. Making all the people part of the reconstruction, even making them listen to the rawest stories and thus relive a bloody past was one of the goals that the *Gacaca* set themselves: only in this way could they aim at a true justice, reconciliation and post-genocide reconstruction¹⁴³. *Politically, gacaca is a brilliant piece of work. It offers something to all groups – prisoners, survivors – it offers them all hope, and a reason to participate.*¹⁴⁴

Many experts have analyzed the *Gacaca* and have given their opinion. NGOs have labeled them negatively¹⁴⁵ while some Rwandan and non-Rwandan scholars (Alice Karekezi, Simon Gasibirege, Mark Drumbl) admit that *Gacaca* aims to punish the killers but also contributes to some post-genocide objectives, particularly reconciliation.¹⁴⁶ In this study I will analyse the second case

¹⁴² African Rights, 'Gacaca Justice: A shared responsibility', Kigali: African Rights, January 2003, p.2

¹⁴³ Clark, P., *The Gacaca courts, post-genocide justice and reconciliation in Rwanda: Justice without lawyers*. New York, NY: Cambridge University Press, 2010

¹⁴⁴ P. Uvin, quoted in G. Packer, 'Justice on a Hill: Genocide Trials in Rwanda', *Dissent*, 49, 2, spring 2002, www.dissentmagazine.org/archives/2002/sp02/packer.shtml

¹⁴⁵ For an example of HRW's analysis of *gacaca*, see A. Des Forges and K. Roth, 'Justice or Therapy? A Discussion on Helena Cobban's Essay on Crime and Punishment in Rwanda', *Boston Review*, summer 2002, www.bostonreview.net/BR27.3/rothdesForges.html. See also AI, 'Rwanda – Gacaca: A Question of Justice', AI Doc. AFR 47/007/2002, December 2002. For two key examples of the strictly legal interpretation of *gacaca* by academic authors, see J. Sarkin, 'The Tension between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due Process and the Role of the Gacaca Courts in Dealing with the Genocide', *Journal of African Law*, 45, 2, 2001, pp.143–72; A. Corey and S. Joireman, 'Retributive Justice: The Gacaca Courts in Rwanda', *African Affairs*, 103, 2004, pp.73–89. I provide a fuller analysis of the range of sources in this first group of observers in Chapters 2 and 10.

¹⁴⁶ See, for example, A. Karekezi, 'Juridictions gacaca: lutte contre l'impunité et promotion de la réconciliation nationale', in E. Ntaganda (ed.), *Les Juridictions gacaca et les processus de réconciliation nationale*, Cahiers de Centre de Gestion des Conflits (no. 3), Butare: Université Nationale du Rwanda, May 2001, pp.9–96; S. Gasibirege, 'L'Élection des juges Inyangamugayo: rupture ou continuité?' in E. Ntaganda (ed.), *De la paix à la justice: les enjeux de la réconciliation nationale*, Cahiers de Centre de Gestion des Conflits (no. 6), Butare: Université Nationale du Rwanda, November 2002, pp.93–127; M. Drumbl, 'Punishment, Postgenocide: From Guilt to Shame to Civis in Rwanda', *New*

and understand the legal and non-legal aspects that led *Gacaca* to be an example of reconciliation justice without professional judges. *Gacaca* despite the quantitative and qualitative results achieved, encountered major challenges:

- At the beginning of data collection, at national level 46,000 *Inyangamugayo* judges, representing the 27.1% were accused of genocide. This automatically led to their dismissal from the job.
- Leaders, especially in local governments, who were accused of genocide, constituted a serious obstacle to the smooth running of *gacaca*.
- There was at the same time, conspiracy for not providing information on genocide, especially in those areas where none survived.
- Strong traumas were manifested during the hearings.
- Some citizens fled their village and were tried in villages where they were unknown.
- Corruption and favoritism in the decision-making process.

Often when analyzing a post-conflict situation, one tends to speak of "legal pluralism" or hybrid structures in which "two or more legal systems coexist in the same social field"¹⁴⁷. So, it was in the case of Sierra Leone and Timor Leste. In Rwanda, however, the complexity of a system like *Gacaca* has often been underestimated by international observers, who have relegated it to an indigenous way of quickly solving a multitude of cases. *Gacaca*, on the other hand, is pluralistic within itself, since it performs functions that in other states had been assigned to more than one institution. *Gacaca* is often seen by non-Rwandans as a tribal system. In many academic and journalistic sources *Gacaca* is invoked as a 'traditional', 'tribal' practice, underlining how it is a practice that is strongly ingrained in the rural communities of the country and automatically appreciated and legitimized by the population¹⁴⁸. The Rwandan government, as Phil Clark reminds us, has also played its part in

York University Law Review, 75, November 2000, pp.1221–326. I provide a fuller analysis of the range of sources in this second group of observers in Chapters 5–9.

¹⁴⁷ S.E. Merry, 'Legal Pluralism', *Law and Society Review*, 22, 1988, p.870

¹⁴⁸ See, for example these four articles, A. Blomfield, 'Village Courts Will Try Thousands over Rwandan Genocide', *Daily Telegraph*, 5 October 2001, www.telegraph.co.uk/news/worldnews/africaandindianocean/rwanda/1358581/village-courts-will-try-thousands-over-Rwandan-genocide.html; R. Carroll, 'Rwandans Face Village Justice', *Guardian*, 5 July 2004, www.guardian.co.uk/international/story/0,3604,1253924,00.html; IRIN News, 'Rwanda: Plans to Reform Traditional Courts', 16 June 2004, www.irinnews.org/print.asp?ReportID=41693; H. Vespereni, 'Rwandans Back People's Courts', BBC News, 5 October 2001, news.bbc.co.uk/1/hi/world/africa/1581236.stm; N. Weisbord, 'Traditional Justice for a Genocide', *International Herald Tribune*, 26 September 2003, www.ihl.com/articles/111291.html.

romanticizing the *Gacaca* story to make it more plausible to international eyes¹⁴⁹. *Gacaca* even before the genocide was a tool in complete evolution that adapted to the needs of daily life.

The institution of the post-genocide *Gacaca* should not be understood as an easy governmental deliberation. In the talks that preceded the implementation of *Gacaca* the Rwandan policymakers were divided and each brought their own experience from previous years and therefore demanded different goals from the *Gacaca*. Kagame himself, then vice-president, was not sure that *Gacaca* was the right way, but that it was the only one possible at the moment. Understanding these divisions within the government elite is fundamental to understanding how the courts will later be articulated and how the *Gacaca* will be directed differently within the country. In February 1999 the UN Office of the High Commissioner for Human Rights following the Urugwiro talks¹⁵⁰ declared that *gacaca* is not competent to hear crimes against humanity but could be used to testify in relation to reconciliation¹⁵¹. Ignoring the UN report Bizimungu and his government produced a draft law. As we have seen before, the *Gacaca* law was enacted in 2001. From that moment on, free elections were instituted in every village or community of the country to elect the *inyangamugayo* (*experts, wise, elders*), the *gacaca* judges.¹⁵² The Rwandan company is organized in an extremely schematic and controlled way from the Chairman to the *nyumbakumi*, so the leader of a ten house cell. From cells to sector, to district, to province until the President. Lists were drawn up with the names of the most respected villagers. The votes were a success for calm, serenity and peace however hot the topic was¹⁵³. The election launched popular discussions on truth, justice and reconciliation.¹⁵⁴ More than 250,000 judges were elected.

In April 2002, these judges underwent a three-week training course given by experienced judges and lawyers.¹⁵⁵ The training focused on legal principles, Organic Law and *Gacaca* Law; how

¹⁴⁹ See, for example, C. Murigande, 'Report on Urugwiro Talks from May 1998 to March 1999', Report on the National Summit of Unity and Reconciliation, Kigali: National Unity and Reconciliation Committee (NURC), 18–20 October 2000, pp.31–4. Even by 2006, however, the NURC was still describing post-genocide *gacaca* as the revival of a 'sleeping but not dead model of justice' upon which 'people in their sectors continued relying' (NURC, Training Manual on Conflict Management, Kigali: NURC, February 2006, p.43).

¹⁵⁰ Urugwiro XXX is where the talks that led to the formation of the *Gacaca* were held.

¹⁵¹ UN Office of the High Commissioner for Human Rights, 'Report on the Situation of Human Rights in Rwanda', UN Doc. E/CN.4/1999/33, 8 February 1999, p.12. A member of the Office of the High Commissioner for Human Rights team responsible for the 1999 report later published a longer critique of the proposed *gacaca* process. See L. Werchick, 'Prospects for Justice in Rwanda's Citizen Tribunals', Human Rights Brief, 8, 3, 2001, pp.15–18

¹⁵² S. Gasibirege, 'L'Élection des juges *inyangamugayo*: rupture ou continuité?' in E. Ntaganda (ed.), *De la paix à la justice: les enjeux de la réconciliation nationale*, Cahiers de Centre de Gestion des Conflits (no. 6), Butare: Université Nationale du Rwanda, November 2002, pp.93–127.

¹⁵³ PRI, 'Report IV', p.30

¹⁵⁴ Gasibirege, 'L'Élection des juges *inyangamugayo*', p.98

¹⁵⁵ African Rights, 'Gacaca Justice: A shared responsibility', Kigali: African Rights, January 2003, p.4

to handle interrogations, analyze evidence, categorize crimes, pass sentence and resolve possible conflicts.

The defendant's journey at *Gacaca*

How did a prisoner come to trial in the *Gacaca*? What were the formal steps followed to judge him? What impact did this path have on the main objective, reconciliation? I will try to answer these questions in this paragraph using Phil Clark as my main source. The prisoner's path is divided into six stages: the imprisonment of genocide suspects;

- the release of selected suspects into eighteen Ingando around Rwanda;
- suspects' three-month-long civic education in the camps;
- their release into their home communities;
- suspects' trials at *gacaca*;
- their sentencing and, in cases where they are found guilty of serious enough crimes, their return to prison and/ or participation in TIG.

The conditions of prisoners in Rwandan prisons at the time were among the worst in the world. Amnesty International had denounced the situation ¹⁵⁶ and the Red Cross had helped build extra facilities to lighten the prisoners' load¹⁵⁷. The Dutch government, donating \$7 million, helped build the Mpanga prison near Nyanza, where 7,500 people were incarcerated¹⁵⁸.

The Government point of view on *Gacaca*

Transitional justice, as we knew it up to the Rwandan case, tried to exclude from the courts the people, who were directly involved in the matter, because the traumas they suffered did not allow them to judge cases impartially. In Rwanda, however, the government wanted to do exactly the opposite. Since almost everyone in the country had suffered genocide or had participated in it, it was

¹⁵⁶ AI report, 'Gacaca: A question of justice', 2002 p.8

¹⁵⁷ United Nations, 'Situation in Rwanda: International Assistance for a Solution to the Problems of Refugees, the Restoration of Total Peace, Reconstruction and Socio-Economic Development in Rwanda (Report of the Secretary-General)', UN Doc. A/51/353, 12 September 1996, p.8.

¹⁵⁸ International Justice Tribune, 'Mpanga, A Stronghold for the UN in Rwanda', 5 May 2009, www.rnw.nl/int-justice/article/mpanga-stronghold-un-rwanda

decided to give the people the power to participate, so that everyone would feel responsible for the future of their country. Participation in the Gacaca in fact guides the people to achieve the stated goals: reconciliation, truth, forgiveness. The entire communities took part in the *gacaca*, anyone could testify, a process of transition never seen and never repeated before. According to former Minister of Justice and Institutional Relations, Jean de Dieu Mucyo, *'The success of Gacaca largely depends on an active and unconditional participation by the population.'*¹⁵⁹. Judges are on hand only to encourage what, 'facilitated problem-solving.'. From this stand- point, the general assembly should conduct an open discussion at *gacaca* hearings, in which judges act as facilitators. The government claims that its officials need to be involved in *Gacaca*, though it rarely outlines what this should entail. 'Handling the *Gacaca* tribunals should be the business of the grassroots populations alone, but leaders, officials and workers should also be involved, especially in areas where they lived at the time of the 1994 genocide and massacres.'¹⁶⁰. Much tougher is President Paul Kagame attacking international justice instead: *'the ICTR has performed very poorly and consumed huge amounts of resources for doing very little. The world is ready to keep wasting resources for doing nothing. The tribunal was not established to deal with the problem we are talking about, of genocide in Rwanda. It's dealing with paying huge salaries to UN workers or other individuals'*¹⁶¹

Leaving aside what may be government propaganda or even truth. One thing seems certain. Having given the population, the instrument to confront themselves, in a period as long as 10 years, with their past, has made all Rwandans more aware and ready if not to forgive at least to live together. An unintentional result of the *Gacaca* has been to bring individuals to confront public life, especially women who, nowadays, form the majority in the government apparatus.

The international view on *Gacaca*

I believe, after my experience in Rwanda, that it is impossible to really understand what the *Gacaca* have meant to the people, how they have been received and what their real social success has been. Since the *Gacaca* have been under the magnifying glass of judges, lawyers, NGOs, governments and large international organizations for 10 years, I will try to outline some external

¹⁵⁹ J. Mucyo, 'Minutes of the Symposium on Gacaca', Hotel Umubano, Kigali, 6–7 March 2000, p.11.

¹⁶⁰ A. Cyanzayire, 'The Gacaca Tribunals: Reconciliatory Justice', *Report of the National Unity and Reconciliation Summit*, 2002, p.44.

¹⁶¹ P. Kagame, interview with V. Brittain, 'The Arusha Tribunal Costs Too Much for Very Few Results', *African Geopolitics*, 11, summer 2003, www.african-geopolitics.org/show.aspx?ArticleId=3537

points of view that can better frame the *Gacaca* phenomenon. Lawyers who had been trained in common law systems were the most critical and were surprised, not understanding the adaptation of Belgian and French civil law applied in Rwanda. Schabas says: “*they were shocked at the relative brevity of the trials and the lack of cross-examination. By contrast, observers from civil law tradition were relatively sanguine and even rather impressed with the proceedings*”¹⁶²

Rwanda's duty to comply with fair trial standards has depended not only on the instruments that the international community has made available to the country but also on certain provisions contained in the constitutional charter. Indeed, the Rwandan Constitution of 2003 expressly refers to the Universal Declaration of Human Rights and the African Charter of Human and Peoples' Rights. Evaluating the *Gacaca*, some scholars claimed that they did not meet any minimum fair trial criteria while others argued that given the extraordinary emergency situation, it was not possible to subject the *Gacaca* to Western standards¹⁶³. The Rwandan Minister of Justice in a letter to Human Rights Watch criticized the application of a Western approach to criminal justice, claiming that ‘this process is a relatively new concept in Rwanda’ and the ‘*Gacaca* was created as an extraordinary measure for solving an extraordinary instance of human rights violation’¹⁶⁴. The African response is contained in the 1999 Dakar Declaration, which states that although the importance of the traditional courts in each country is recognized, the rules and laws must be adapted and equated with the principles contained in the African Charter of Human and Peoples' Rights and Article 14 of the ICCPR¹⁶⁵. As regards the trial in absentia, Article 14 ICCPR explicitly prohibits it. The *Gacaca* legislation allows it, as does the Roman-Germanic tradition, while it is prohibited in common law¹⁶⁶. Evaluating the *Gacaca*, I think it is very difficult because we have to take into account several aspects that I try to list:

- the Rwandan people came from a genocide and at least for the last 40 years had lived in a climate of violence and massacres;
- *Gacaca* gave importance to pre-colonial structures and established trials in Kinyarwanda;

¹⁶² Schabas W., ‘Genocide Trials and Gacaca courts, *Journal of International Criminal Justice* 3, p. 879-895, 2005...

¹⁶³ See Haile 2008, p. 21: ‘What is more disturbing about Gacaca process is that while violations of fair trial standards in regular courts occur in spite of the law, the gacaca law institutionalized such violations in contravention of the Rwandan Constitution, the African Charter of Human and Peoples’ Rights and other relevant international human rights instruments’

¹⁶⁴ Human Rights Watch 2011, p.138

¹⁶⁵ See *Dakar Resolution on Fair Trial and Judicial Assistance in Africa*, African Commission on Human and Peoples’ Rights, 1 September 1999

¹⁶⁶ See Haveman and Muleefu 2011: ‘Criticism on the fact that gacaca know trial in absentia do not so much regard the gacaca in particular, it is a practice in half of the world’

- Anyone could be questioned and participate in the trials;
- The judges were chosen democratically by the people;

However, as Rwanda is a party to international conventions, its courts must accede to them. Paul Christophe Bornkamm analyses the phenomenon in this way: *“the deficiencies prevent Gacaca from being considered a fair mechanism in the formal or procedural sense of the word, which underlines Article 14 of the ICCPR and the corresponding provision of the Banjul Charter. In addition, the discussion has shown that these shortcomings are not only of a procedural nature, but that they also pose a concrete threat to the outcome of Gacaca trials. It is not necessary to visit many Gacaca sessions to recognize that this threat is, in fact, very real. On the other hand, I had the impression that most judges did perceive their task as an honor, and that the majority of them were very committed and acted in a good faith. While people are often frustrated with a certain judgment, it appears that, astonishingly, Gacaca still enjoys a great deal of general support”*

Reconciliation after mass atrocities in Rwanda

In order to evaluate the contribution *Gacaca* has made to Rwandan reconciliation, one must first understand what reconciliation is. Reconciliation is a long-term process and its pace cannot be dictated. It involves coming to terms with an imperfect reality which demands changes in attitudes, aspirations, emotions and feelings. Reconciliation must be done both at national and individual level where each human being must be able to run his life as before the conflict but without fear of hate. The United Nations declared 2009 the International Year of Reconciliation¹⁶⁷. Dan Smith's study indicates that the area of post-genocide reconciliation is one of the most attractive for foreign donors. But why is reconciliation considered so important today? Of the 83 wars fought between 1989 and 1992, 80 were intra-state, which suggests that strategies such as negotiation, diplomacy and mediation are no longer sufficient¹⁶⁸. The process has different stages in the time. First, it is important to replace fear with non-violent coexistence. This is not easy in Rwanda, where, as we have seen, massacres have happened for 30 years before 1994. Secondly, a big part is played by the state, that helps in rebuilding confidence and trust among people. At the last stage, people must look for empathy. Victims have to listen the perpetrators and vice versa, in order to understand each other position.

¹⁶⁷ UN Security Council, Report of the panel on United Nations Peace Operations A/55/305-S/2000/809, 2003, p.3

¹⁶⁸ See Goodhand J. and Hulme D., From wars to complex political emergencies: Understanding conflict and peace building in the new world disorder. Third World Quarterly, 1999

Truth and reconciliation commissions have been means used to achieve the process. Since 1974, at least 25 such commission have been established around the world and have changed something, particularly in the context of post-conflict society. The largest proportion of literature in the field focuses on few cases: the TRC and the Latin American commissions (Chile, El Salvador, Haiti, Guatemala) and East Timor. Those commissions acted in different ways and sought different things. TRC main theme was Ubuntu¹⁶⁹ while in East Timor the political elite headed by Xanana Gusmao underlined the importance of reconciliation without trials. The underlying assumption was that trials would lead to instability rather than justice. Reconciliation is a complex concept. Of its philosophical and moral meaning and how reconciliation has been pursued even after other massacres, I will deal more extensively in the final chapter. In a post-conflict situation like that of Rwanda, the reconciliation process was applied to all citizens of the country because in some way everyone was affected by the genocide. When the war ends, in general, one reaches an agreement, and a new government builds better relations between the factions previously at war¹⁷⁰. Reconciliation means to live with the former enemy, to share the same spaces, country and lives. It means to develop the necessary degree of cooperation to exist together. We can highlight and analyse 4 ways in which reconciliation can be achieved:

- **Restitution:** return of property or other measures to re-establish the situation before the violation was committed;
- **Compensation:** the total payment of damages or smaller symbolic payments as an acknowledgment of one's victimization;
- **Rehabilitation:** medical and psychological care, establishment of charges or the restoration to a job from which one was dismissed for political reasons, legal and social services, educational benefits;
- **Symbolic measures:** official apologies, construction of memorials, establishment of commemoration days, re-burials;

Systems and programs for reconciliation

In order to strengthen the process of peace building, promotion of reconciliation and fair justice, other institutions were set up. The National Unity and Reconciliation Commission (NURC) was

¹⁶⁹ See for more: www.truthcommission.org

¹⁷⁰ D. Bloomfield, "Reconciliation after violent conflict", p.25

created on 12th of March 1999 and tried to study the history of the country and previous failures in order to not repeat it in the future. The NURC organized tours across the country to explain the importance of justice to the population. Main task of NURC was to set up the *Ingando* camps. At the beginning *Ingando* were used for rehabilitating prisoners then they were used as solidarity camps in which every Rwandan must participate once in his life. At the beginning *Ingando* were joined by different categories:

- Youth preparing to join higher education;
- Soldiers ambitious to return to civilian life;
- Former Interahamwe soldiers who wished to be reintegrated to the new national army;
- Official in charge of local and national administrations;
- Teachers;

To further ease the pressure on prisons, the government released the elderly inmates and sent approximately 20,000 prisoners to 18 *Ingando* camps. The camps were inaugurated on January 31, 2003 and the first wave of inmates received a wide range of lessons, participated in community service work, such as rebuilding houses destroyed during the genocide. The *Ingandos* could accommodate from 2,000 to 650 people depending on their size. Initially the inmates were told that their stay there would last two months but soon became almost twice as long. In the margins of the *Ingando* program, a psychologist who worked there commented that "the government is the most important agent in making people good or bad. The reconciliation camps were founded with the goal that the state should teach the people how to live in harmony and prosperity"¹⁷¹. Patrick Mazimpaka, former Rwandan presidential envoy to the Great Lakes, describes the basics of *ingando* as the Kinyarwanda '*uburere buruta ubuvuke* concept: people are not born with values; values can only be internalized through practice and education. And we need to have a specific education for reconciliation and democratization"¹⁷². Currently, *Ingando* are joined by students after the end of high school. They stay in the camp for three weeks and learn about previous history of the country and post-genocide reconciliation path. NURC followed directions given by the government. Their task included:

- Promotion of common values in form of speeches and programs made from the government, churches;

¹⁷¹ Interview by Phil Clark, Gashora, 18 Aprile 2003

¹⁷² P. Mazimpaka, 'Reconciliation and Democratization Processes after the Genocide', in *Reconciliation and Democratization: Experiences and Lessons Learned in Reconciliation and Democratization from Germany, South Africa, Namibia and Rwanda*, Kigali: NURC, October 2003, p.22.

- Unity has been promoted with interreligious dialogue in the country where people of different belief were invited to share meals and daily life. The aim is to give dignity to all Rwandans regardless of social group, region, ethnicity or culture;
- Introduction of projects in which perpetrators and victims work together;

In its work, NURC tried to promote the Rwandan identity and put the national interest first, interdependence and synergy in nation building, fight discrimination, divisionism, genocidal ideas and often commemorate the victims. During the senate plenary session of the 10th of February 2015, the NURC represented by its president bishop John Rucyahana and the executive secretary, presented its 2013-2014 annual activity report and action plan. With the main mission of reconciling Rwandans, the commission highlighted challenges such as the genocide ideology that is still persisting in certain strata of the community, the lack of enough financial means due to a low budget, the spread of wrong ideas by some media. Moreover, they highlighted the situation of churches, where members still cling to divisive thoughts and neighboring to Congo where the genocide ideology is well maintained and nurtured by FDLR terrorist group. Regarding the way forward, the commission told the senate that it will continue to foster Ndi Umunyarwanda program (I am Rwandan), where different people are reached internationally. In 1998, the government adopted the law n 02/98 establishing a national assistance fund for needy victims of genocide and massacres committed in Rwanda between 1 October 1990 and 31 December 1994 (Fond d'Assistance aux Rescapes du Genocide – FARG)¹⁷³. Its beneficiaries were survivors of the genocide and massacres who were in special need, especially orphans, widows and persons with handicap. It has funded a range of social projects such as education, health, housing, income-generation; the fund is extra-judicial, having no bearing on claims before civil and criminal courts.

At its conception, community service was believed to offer enormous potential for post-genocide reconciliation and made some important strides toward this goal. Those entering the program received professional training and the realistic hope for work. Evidence also suggested that community service has minimized the social alienation caused by incarceration. Many of those who were sentenced to community service (as at February 2010, many thousands were still in community service programs) initially reluctant and even frightened by the concept (which was previously an unknown penalty in Rwanda) came to view it as a positive step. Some survivors also professed to be satisfied with the work provided in the camps, some of which has been of directed benefit to them.

¹⁷³ Article 26 of law 69/2008 of 30/12/2008 law relating to the establishment of the fund for the support and assistance of the survivors of the Tutsi genocide and other crimes against humanity committed from 1st October 1990 to 31st December 1994, and determining its organization, powers and functioning, modalities for distribution of support and assistance.

An example could be the Nyanza and Rwamagana camps, where prisoners-built houses for widows of the genocide. Truth Commission reports generally focus on a description of the circumstances surrounding abhorrent practices resulting in severe human rights violations, often including an assessment of ‘root causes’ found in the recent history of the country. They also formulate recommendations addressed to the appropriate authorities in the areas that are logical follow-up to their findings: prosecutions, reparations to victims, protection of witnesses, educational programs, social and economic policies¹⁷⁴. It is clear that those recommendations are not mandates, so they do not present constitutional problems, even if there is a reasonable expectation that their implementation will be taken seriously by those in position to execute them¹⁷⁵. Other programs established with the aim of pursuing reconciliation were:

Itorero Ry’igihugu was established in 2007. The Itorero program’s goal is to promote Rwandan values and cultivate future leaders who strive for the development of the community. It includes trainings of administration leaders, political parties’ leaders, Youth and Women in trauma counselling, conflict mitigation and resolution.

Ndi Umunyarwanda program initiated in 2013, with the ultimate goal of building a National Identity and to foster a Rwandan community that is based on Trust and Unity, the I am Rwandan program’s goal was to strengthen solidarity between people, uphold their moral and spiritual values as well as make them understand their fundamental rights as Rwandan. With Ndi Umunyarwanda, Rwandans today should critically examine our dark history towards shaping a bright future. They should seek to uphold the moral values of all Rwandans, to restore their unity in building their country and getting rid of the genocide ideology, for the sake of posterity. The concept is based on four pillars: History, Testimonies, Forgiveness and Healing.

Rwanda Peace Education Program (RPEP) promotes social cohesion, positive values –including pluralism and personal responsibility – empathy, critical thinking and action to build peaceful society. The program brings together experienced partners in the field of peace education. Aegis Trust, as lead partner, is working with Radio La Benevolencija, the Institute for Research and Dialogue for Peace

¹⁷⁴ J. Mendez, *Constitutionalism and Transitional Justice*, The Oxford Handbook of Comparative Constitutional Law, Michel Rosenfeld and András Sajó, 2012

¹⁷⁵ Despite this clear difference between truth-seeking and prosecution, the issue of constitutionality of non-prosecutorial inquiries has also been raised in the context of a hearing at the US Congress on the need for a commission of inquiry about allegations of arbitrary detention and torture in the so-called ‘global war on terror’. David Rivkind, a former official in the George W. Bush Administration, argued that a commission of inquiry would violate the due process rights of officials who could potentially be defendants in criminal prosecution under the same set of facts. He did not, however, call for prosecutions.

and the University of Southern California Shoah Foundation to deliver the program across Rwanda. The program was launched on 1 July 2013 and is funded by the Swedish International Development Authority (SIDA). The Rwanda Peace Education Program has four main areas of focus:

1. Education Outreach Program:

The program is currently conducting 20 community visits, each of three weeks, across all regions of the country. A mobile exhibition uses a storytelling methodology from people of all ages who tell of how the genocide affected them as well as stories of reconciliation since 1994. The program also involves training teachers in how to deliver peace education, school workshops, youth activities, community and school debates, dialogue clubs and arts and drama workshops. The outreach program also engages district leaders and decision makers in the community.

2. Kigali Genocide Memorial Education Program

School workshops are delivered at the Kigali Genocide Memorial with four newly built classrooms enabling the program to increase the number of workshops it hosts. The workshops focus on social cohesion and personal responsibility.

3. Genocide Archive of Rwanda

The Genocide Archive of Rwanda is used by the peace education program as a resource to teach participants about the causes, implementation and consequences of the genocide against the Tutsi. The program draws on the more than 8,000 items in the archive.

4. Youth Champions Program

Over the next three years, 600 youth champions will be trained to be leaders in their communities. The ambassadors will form a national network of young leaders and will be trained in personal responsibility and social cohesion and will be part of organising activities for the annual commemoration of the genocide – Kwibuka.¹⁷⁶

Reconciliation villages

¹⁷⁶ <http://genocidearchiverwanda.org.rw/index.php?title=RPEP&gsearch=RPEP>

From the 2000, the idea of bringing together victims and killers took the government to establish new villages where they could live together. 25 years after the genocide, survivors and perpetrators have made commendable strides toward reconciliation. They live house by house, work together, eat together and intermarry. According to John RUCYAHANA, president of NURC and chairman of Prison Fellowship Rwanda, the initiative is rooted in the Holy Bible and intends to restore the victims and offender's relationship. *"We preached to prisoners to confess and seek pardon. We also prepared survivors to forgive, even before the offender apologized"*, said Rucyahana, adding that they then, started a program *'Heal me and I heal you'*. The program aimed at mending broken hearts of the victims and relieving frustrated hearts of perpetrators. He adds that *"Rwandans should understand the need to reconcile because genocide crushed lives of many people and properties but still, people have to live in this country together"*¹⁷⁷. These villages are comprised of clusters of homes built for genocide offenders and victims. In many cases, victims live in the same village, with the very perpetrators who harmed them and their families in 1994. Members of these reconciliation communities have chosen to step beyond forgiveness and embrace reconciliation. They have committed to live together, work together and caring for one another. Reconciliation villages usually offer:

- seminars and group discussions about the importance of forgiveness and reconciliation;
- training in efficient and effective methods for tending crops and raising livestock, farming tools, seeds, and fertilizer to maximize yields;
- environmental reflecting peace, sustainability, stability and health relationships among the community members in agricultural products in nearby marketplaces;

In conclusion we can state that Rwanda's transition process can be judged more than positively, although not yet completed. Justice has run its course by adhering as closely as possible to the Rwandan tradition and thus meeting the needs of the population. Alla fine del genocidio c'era bisogno di riconciliare la popolazione e si è sono scelte due strade. L'UN attraverso ICTR ha giudicato coloro che avevano organizzato i massacri. At the end of the genocide there was a need to reconcile the population and two paths were chosen. The UN through the ICTR judged those who had organized the massacres. There was a lot of international attention around the trials but in fact the Arusha tribunal changed little the lives of Rwandans. Instead, the national government has implemented the *Gacaca*, a traditional body of justice that has analyzed more than a million cases. In the people's courts, those who admitted their guilt received a reduction in their sentences, but it often happened

¹⁷⁷Full interview at www.nurc.gov.rw

that one trial led to another. For the majority of Rwandans, the *Gacaca* have served to grant forgiveness and have been a tool to make the people aware of their guilt. There has been a lot of criticism, especially from human rights organizations (AI, HRW). The instruments for reconciliation have been various. The government has set up re-education camps and civil reconstruction program.

In the next chapter I will outline the constitutional parable and show how the state has been rebuilt from its foundations, completing the legal analysis of post-genocide reconciliation.

~ CHAPTER THREE ~

Constitution making process and the new government

“It is the first time in the history of Rwanda that political change in the highest leadership of the country has taken place in peace and security”

Paul Kagame

Introduction

In the previous chapter I analyzed how justice took its course in the post-genocide transition. In this third chapter I will look at how the basic structures of the country were rebuilt and how they were organised. I will therefore start with the constitutional process. I will list the dates, the developments and the most important and peculiar parts of the new constitution.

The problems arising from constitutional transitions are many. Scholars have divided the constitutional process into two categories¹⁷⁸. The first includes those processes that take place according to a pre-existing constitutional structure, the 'juridical' constitution making processes. The second includes those processes resulting from a rupture in the previous constitutional system, the *de facto* constitution making processes¹⁷⁹. The latter can be divided into non-juridical and anti-juridical. The non-juridical ones take place in a legal vacuum (a military defeat of the previous regime) while the anti-juridical ones go against the current constitutional system. It is important here to separate the constitutional 'acts' from the constitutional 'facts'¹⁸⁰. The formers are legal in nature, the latter are not. The study of constitutional power was carried out in the 20th century by the Italian jurist Santi Romano and received attention especially in the post-Apartheid constitutional debate in South Africa. De Vergottini analyzed the new constitutions adopted following political changes in the last 30 years. In almost all constitutions there are references to the bloody past of the country and *new social*

¹⁷⁸ See Biscaretti di Ruffa, *Introduzione al diritto costituzionale comparato*, Giuffrè, Milan, 1988, pag 688

¹⁷⁹ Romano S., *L'instaurazione di fatto di un ordinamento costituzionale e la sua legittimazione*. Scritti Minori, Vol I, Giuffrè, Milan, 1990 pag 133-201

¹⁸⁰ See De Vergottini G., *Diritto costituzionale comparato*, CEDAM, Padova, 2007

contract and memory pact constitutive texts are stipulated. Many constitutions encapsulate the collective memory of the country that represents the true 'social glue'. Article 20 of the German Grundgesetz 1949 contains John Locke's principle of the right to resistance against the oppressor¹⁸¹. In the Italian constitution of 1948, all fascist activities are banned¹⁸². This paper in its last chapter will establish a link between constitutional process and memory.

Constitution: the historical path

Like many former colonies, Rwanda before 1994 did not have a true indigenous constitution. The constitution was based on foreign models that never took into account the social aspects and peculiarities of the state. The Rwandans have never participated in the elaboration of the text in the past, which was simply imposed on them by the colonists. The constitutional history of the country can be divided into 3 stages:

- independence/decolonization;
- post-independence;
- the 90s;

The 1961 Constitution was drafted at a time of transition for the country. It was basically the product of the Hutu revolution that wanted to overshadow the Tutsi domination instilled by the Belgians. The growing violence between the two ethnic groups led the Belgians to organize free elections in 1960. The result was a crushing Hutu victory that saw the system of forces in the field overturn. Following a constitutional referendum supported by the Belgians, the monarchy was abolished in 1961 and the country became a republican system with Dominique Mbonyumutwa as head of the transitional government. In 1962 a new constitution was adopted whose primary objective was to consolidate the republic and introduce a multi-party regime. *De facto*, however, the situation was very different. The only party was the Rwandan Democratic Movement (MRND Parmenhutu) which ran the state alone. In 1973, Juvenal Habyarimana, former Army Chief of staff, came to power with a coup d'état, the constitution was suspended, and he led the country through decrees until 1978 when a new text was drafted. The 1978 constitution produced few changes from a democratic point of view. Rwanda witnessed a legal transition to a one-party regime. Article 40 stipulated that only

¹⁸¹ Article 20 of German Constitution states that: "All Germans shall have the right to resist any person seeking to abolish this constitutional order if no other remedy is available"

¹⁸² It states: "It is forbidden the re-establishment of the Italian fascist party"

the MRND and its chairmen could run for presidential office. The end of the Cold War and the disintegration of the Soviet Union provoked a strong wave of democratization in Eastern Europe that extended to African countries. With the Soviets no longer in the way, Western donors began to put terms on their development programs. Aid would only come in the event of improvements in laws and democratic reforms in favor of human rights. In October 1990, as we know, the RPF invaded Rwanda from the north and demanded power sharing. These dynamics led Habyarimana to introduce a multi-party system even under the influence of Western governments. The new constitution, however, was never really applied given the civil war that broke out. The Arusha peace agreements of August 1994 were the basic law of Rwanda during the transitional period from 1994 to 2003. A constitutional commission was formed whose task was, for 3 years, to lead the constitutional process. Its tasks were:

- Train, consult and sensitize the people on the process of constitution making process;
- Prepare and validate the draft bill;
- Organize a referendum on the text when approved by parliament, and, harmonize all laws in the new constitution;

The constitutive process has been widely criticized for being predominantly led by the government headed by Kagame. However, it has been given credit for creating the first true constitution written by Rwandans and based on real needs, aspirations and interests. The text was adopted following a constitutional referendum in 2003. Innovative tools included in the constitution are a National Unity and Reconciliation Commission set up to combat genocidal ideology. Similar institutions (Commissions for Women, Youth, Civil Service, Genocide Fighting, Education High Council, etc.) promoting good governance were provided, as a response to the long period of bad governance that led to genocide. The *Gacaca* judicial system was instituted. The writing of the Rwandan constitution was also engendered not only in the process but also in its substance. It introduced a strong gender policy based on principles of equality and human rights, requiring at least 30% representation of women in all decision-making processes¹⁸³. The current constitution of Rwanda was adopted by referendum on 26 May 2003.

¹⁸³ More detailed informations at <http://constitutionnet.org/country/constitutional-history-rwanda>

Choice	Votes	%
For	3,132,291	93.42
Against	220,462	6.58
Invalid/Blank votes	119,447	-
Total	3,472,200	100
Registered voters/Turnout	3,863,965	89.9

2003 Constitutional Referendum. Source: African Elections Database

The text

The constitution provides for a presidential system of government with separation of power between the three branches. It consists of twelve chapters plus the initial preamble. In the preamble we note that there is a broad description of all the themes that found the new republic. It speaks about the history of the country and the common destiny of the Rwandans, there is the condemnation of genocide denial, respect for human rights and individual freedoms¹⁸⁴. Even the twelve following chapters are divided in clusters of articles. We find the administrative division, duties and rights of the citizens, and the division of governments with its responsibilities¹⁸⁵.

¹⁸⁴ *We, the People of Rwanda,*

HONOURING our valiant ancestors who sacrificed themselves to found Rwanda and the heroes who struggled for security, justice, freedom, and the restoration of our national tranquillity, dignity and pride;

CONSIDERING that we enjoy the privilege of having one country, a common language, a common culture and a long-shared history which must enable us to have a common vision of our destiny;

CONSCIOUS of the genocide committed against Tutsi that decimated more than a million sons and daughters of Rwanda, and conscious of the tragic history of our country;

MINDFUL that peace, security, unity and reconciliation of the people of Rwanda are the pillars of development;

COMMITTED to building a State governed by the rule of law, based on the respect for human rights, freedom and on the principle of equality of all Rwandans before the law as well as equality between men and women;

COMMITTED further to building a State based on consensual and pluralistic democracy founded on power sharing, national unity and reconciliation, good governance, development, social justice, tolerance and resolution of problems through dialogue;

COMMITTED to preventing and punishing the crime of genocide, fighting genocide negationism and revisionism, eradicating genocide ideology and all its manifestations, divisionism and discrimination based on ethnicity, region or any other ground;

COMMITTED to upholding our values based on family, morality and patriotism, and ensuring that all State organs serve our common interest;

EXERCISING our sovereign and inalienable right to freely choose the form of Government for our country;

¹⁸⁵ Sovereignty and supremacy of the Constitution (1-3); Administrative division (4-9); Fundamental principles (10-11); Human Rights and freedoms (12-43); Duties of the state and of citizens (44-53); Political organizations (54-60); Branches of government (61-157); National defense and security (158-161); Finance and taxes (162-166); International treaties (167-170); Transitional provisions (171-174); Revision of the constitution (175-177);

The current constitution is a mix of the 1991 constitution, the Arusha agreements and additional protocols introduced by the transitional government. The intention of the commission was to try to draft a text as native as possible and which reflected the needs of the citizens. To do so, the government sent surveys to the various civilian groups in the country and refused proposals for help from the international community except for financial assistance¹⁸⁶. The constitutional referendum approved the text and allowed future elections. In the margins of the vote, a Human Rights Watch activist declared: "The draft constitution confers to the government broad powers to curtail speech or meetings that are deemed divisive"¹⁸⁷. The government gave the referendum a high profile, which meant that the turnout on voting day was 87%. The constitution was overwhelmingly accepted, with 93% voting in favor. This constitution, among other things, changed the country's official name from "Rwandese Republic" to "Republic of Rwanda"¹⁸⁸. A referendum on the Rwandan constitution was held on 18 December 2015. The amendments would allow President Paul Kagame to run for a third term in office in 2017, as well as shortening presidential terms from seven to five years, although the latter change would not come into effect until 2024¹⁸⁹. They were approved by around 98% of voters¹⁹⁰. The constitution provides for two parliamentary chambers within a multi-party system. The constitution does not allow the hegemony of one of the two ethnic groups and therefore article 54 on the recognition of political organizations says that: *"A multiparty system is recognized. Political organizations fulfilling the conditions required by law may be formed and operate freely. Duly registered political organizations receive State grants. An organic law determines the modalities for the establishment and functioning of political organizations, the conduct of their leaders, and the process of receiving State grants."*¹⁹¹

Article 10 and related "genocide ideology law"

Article 10 of the 2003 Constitution commits the Government to:

"The State of Rwanda commits itself to upholding the following fundamental principles and ensuring their respect:

¹⁸⁶ W. Gasamagera(2007-06-22). "The Constitution Making Process in Rwanda: Lessons to be Learned" (PDF). *7th Global Forum for Reinventing Government, Vienna, Austria, 26-29 June 2007*. United Nations. Retrieved 2013-02-11.

¹⁸⁷ THE BBC News, Monday, 26 May 2003. Full article at <http://news.bbc.co.uk/2/hi/africa/2937890.stm>

¹⁸⁸ Economist (2003-05-29). "Rwanda's new constitution: The fear of majority rule". Retrieved 2013-02-08.

¹⁸⁹BBC News (2003-05-26). "Rwanda votes on constitution". Retrieved 2013-02-08.

¹⁹⁰Full text available at: <https://www.bbc.com/news/world-africa-35138671>

¹⁹¹ Full text at pag. 18 : https://www.constituteproject.org/constitution/Rwanda_2015.pdf?lang=en

1°. prevention and punishment of the crime of genocide, fighting against denial and revisionism of genocide as well as eradication of genocide ideology and all its manifestations; • Reference to country's history

2°. eradication of discrimination and divisionism based on ethnicity, region or on any other ground as well as promotion of national unity;”

The origin of the term “genocide ideology” is not known. However, the infraction “genocide ideology” (also called “ingengabitekerezo ya jenocide” in the Rwandan language) is a term coined by the RPF-led Rwandan government following the 1994 Rwandan genocide. This term is defined in Articles 2 and 3 of Law No 18/2008 of 23/07/2008¹⁹². Law No. 18/2008 of 23 July 2008 relating to the Punishment of the Crime of “Genocide Ideology” was promulgated in October 2008. Under the law, the crime of “genocide ideology” is defined as:

“Behavior manifested by facts aimed at dehumanizing a person or a group of persons with the same characteristics in the following manner:

1. threatening, intimidating, degrading through defamatory speeches, documents or actions which aim at propounding wickedness or inciting hatred;

2. marginalizing, laughing at one’s misfortune, defaming, mocking, boasting, despising, degrading, creating confusion aiming at negating the genocide which occurred, stirring up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred;

3. illing, planning to kill or attempting to kill someone for purposes of furthering genocide ideology.”

The sentence for being accused of “genocide ideology” is imprisonment for ten/twenty-five years and a fine of up to one million Rwandan francs (1,000€). According to article 1 of Law No. 47/2001 on Prevention, Suppression and Punishment of the crime of Discrimination and Sectarianism, sectarianism is defined under the law as *“the use of any speech, written statement or*

¹⁹² D. E. Uwizeyimana, “Aspects and Consequences of the Rwandan Law of Genocide Ideology: A comparative analysis, Open Journal of Social Sciences, November 2014

action that divides people, that is likely to spark conflicts among people, or that causes an uprising which might degenerate into strife among people based on discrimination”

The laws of Rwanda on “genocide ideology”, sectarianism and divisionism have been severely criticized by NGOs, including on the grounds that it is unclear what acts constitute crimes under the laws and that they violate the right to freedom of expression¹⁹³. Amnesty International has described the laws as “broad and ill-defined” and stated that “the vague wording of the laws is deliberately exploited to violate human rights”¹⁹⁴. Other human rights groups affirm that the laws could be used to prosecute those who make positive references to ethnic identity or who seek to advocate for ethnic rights. Credible allegations have been made that charges of “divisionism” and “genocide ideology” have been used to silence dissent and obstruct the activities of legitimate political opposition (see chapter VI on political participation below). Government-sponsored surveys have revealed that it is commonly understood by Rwandans that references to ethnicity or ethnic groups are prohibited by law¹⁹⁵. Among the major criticisms of the 2008 law on “genocide ideology” and sectarianism was that it was replete with ambiguity and confusion¹⁹⁶. It was said that these laws were so confusing that almost all Rwandans, the judges who are responsible for their interpretation and even deputies who made them had no clear understanding of what exactly constitutes genocide ideology nor what conduct is criminal under these laws¹⁹⁷. In 2006, that is, two years before the Rwandan law of genocide passed, the Rwandan Senate report admitted that it was not easy to provide a “systematic definition of genocide ideology” included in the law it had just passed¹⁹⁸. The confusion in this law was further complicated by its focus on perceptions of a speaker’s alleged underlying philosophy, rather than whether the speaker’s words constitute advocacy of hatred that amounts to violence, discrimination or hostility¹⁹⁹. Following many months of intense pressure and lobbying the Rwandan government finally announced its plan to amend its 2008 law of “genocide ideology” in 2010. Among the major problems was that “the 2008 law could not differentiate “genocide ideology”

¹⁹³ G. McDougall report, UN General Assembly Human Rights Council, nineteenth session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 28.11.2011

¹⁹⁴ Amnesty International, *Safer to Stay Silent: The chilling effect of Rwanda’s laws on ‘genocide ideology’ and ‘sectarianism’* (London, 2010), p. 7.

¹⁹⁵ National Unity and Reconciliation Commission, *Rwanda Reconciliation Barometer*.

¹⁹⁶ Amnesty International, *Safer to Stay Silent The chilling effect of Rwanda’s Laws on ‘genocide ideology’ and ‘sectarianism, 2010*. http://www.concernedhistorians.org/content_files/file/TO/236.pdf

¹⁹⁷ *Ibid*

¹⁹⁸ Rwandan Senate, *Rwanda: Genocide Ideology and Strategies for its Eradication, 2006*. http://books.google.co.za/books/about/Rwanda.html?id=GsfmWEACAAJ&redir_esc=y

¹⁹⁹ Amnesty International, *Safer to Stay Silent The chilling effect of Rwanda’s Laws on ‘genocide ideology’ and ‘sectarianism, 2010*. http://www.concernedhistorians.org/content_files/file/TO/236.pdf

and related offences such as minimizing, negating, and justifying the genocide”²⁰⁰. The Rwandan government claims that its amended law of “genocide ideology” punishes only *“an intentional act in public, whether in a speech, writing, video or other medium and that the action must be characterised by thoughts based on ethnicity, religion, nationality or race to foment genocide and/or support genocide”*²⁰¹. The amendment sought to remove the vagueness and ambiguity from the law in the sense that the amended version outlines the different acts that constitute “genocide ideology”²⁰². For example, according to Jean Pierre Kayitare, the Rwandan government’s Assistant Attorney General, these acts include: “incitement to commit genocide; negation of the genocide against the Tutsis, trivializing the genocide or justifying it; and hiding or destroying of evidence of genocide or of other crimes against humanity. Theft, destruction and violence against survivors are other offences it seeks to punish”.

Another new element is that “under the amended law, criminal intent must be proved, and an act of inciting genocide must be carried out in public (with the term public defined as in front of more than one person)”²⁰³. However, the said amendments in the new law do not say anything about 1.3 million people who have been prosecuted and condemned, some to death penalties or longer jail terms, under the old laws of genocide. There is no doubt that many of these people have been rightly found guilty for crimes they have indeed committed. However, the fact that the laws of genocide were ambiguous and were sometimes used to settle personal differences or to achieve political gains, as argued by some organizations such as Amnesty International Report, logically suggest that some of them could also have been found guilty for crimes they did not commit or something which is not necessarily a crime. While the Rwandan government claims that the amended law makes that difference clear, a closer analysis shows clearly that it did not. For example, according to the Human Right Watch Report 2012 “vague offenses such as approving of the genocide by “mocking” a person or group on the basis of shared characteristics are still included in the amended law”²⁰⁴.

²⁰⁰ D. E. Uwizeyimana, “Aspects and Consequences of the Rwandan Law of Genocide Ideology: A comparative analysis, Open Journal of Social Sciences, November 2014

²⁰¹ Kwesiga, B. Rwandan Senate approves genocide law, Africa Review, August 1, 2013. <http://webcache.googleusercontent.com/search?q=cache:RCLkodKv49MJ:www.redpepper.co.ug/rwandan-approves-genocide-law/+&cd=1&hl=en&ct=clnk&gl=za>

²⁰² Gashugi, O.A. “Clearer Genocide ideology law to be more lenient”, 2013. <http://focus.rw/wp/2013/08/clearer-genocide-ideology-law-to-be-more-lenient/>

²⁰³ Sapa-AFP (2013). “Rwanda parliament votes to amend genocide law. <http://www.timeslive.co.za/africa/2013/07/17/rwanda-parliament-votes-to-amend-genocide-law>

²⁰⁴ HRW, (2012). World Report 2012: Rwanda. <http://www.hrw.org/world-report-2012/world-report-2012-rwanda>

The 2015 Constitutional Reform process

A constitutional referendum took place in Rwanda in 2015. This referendum followed a petition regarding the amendment of Article 101 of the Constitution, which calls for the reduction of the presidential term from 7 to 5 years. The petition received more than 3.7 million signatures, equivalent to 60% of possible voters. "Of millions of Rwandans consulted by lawmakers on the need to amend Article 101 of the Constitution in the past few weeks, only 10 were against the idea"²⁰⁵ says the New Times, the most popular local newspaper in the aftermath of a poll on the vote.

Choice	Votes	%
For	6,157,922	98.3
Against	105,260	1.7
Invalid/Blank votes	22,171	-
Total	6,285,353	100
Registered voters/Turnout	6,392,867	98.3

2015 Constitutional Referendum. Source: National Electoral Commission

On 8 October 2015, Rwanda's Supreme Court ruled that Paul Kagame could run for a third presidential term in 2017, dismissing the opposition Democratic Green Party's lawsuit challenging any amendment to the constitutional two-term limit. Explaining the judgement, Chief Justice Sam Rugege said, "Denying the free will of the people to choose how they have to be governed is not democratic, rather it is the opposite," referring to the fact that the constitutional change proposed by parliament must now be put to a national referendum. The fact that the issue even reached the Supreme Court surprised many observers who expected the High Court to do the government's bidding and dismiss the Democratic Green Party's case when it was first brought in September. The High Court ultimately rejected the government's claim that the lawsuit undermined the authority of parliament and sent the case to the Supreme Court.²⁰⁶ Addressing the nation on December 31, Kagame

²⁰⁵ Rwandan lawmakers found only 10 people in nationwide consultations who opposed possible constitutional changes to allow strongman Paul Kagame a third term in power, a report said Tuesday. Lawmakers began a national tour last month to gather opinions after both houses of parliament voted in support of constitutional change, backing a petition signed by millions of citizens. Over 3.7 million people — over 60 percent of voters — signed the petition calling for a change to Article 101 of the constitution, which limits the president to two terms, according to Rwandan media. On Monday, lawmakers submitted their report from the consultations to parliament. Full article available at <https://www.nation.co.ke/news/africa/Paul-Kagame-third-term-bid-MPs-report/-/1066/2827968/-/e9v9m2z/-/index.html>

²⁰⁶ P. Clark, "Rwanda: Kagame Third Term - Popular Support but a Wary Ruling Party", 3.12.2015, Huffington Post. https://www.huffingtonpost.co.uk/dr-phil-clark/rwanda-kagame-third-term-_b_8703166.html?guccounter=1

declared he would run for a third mandate: *“You asked me to continue to lead this country after 2017. Given its importance to you, I can only accept”*. Kagame's announcement to both international observers and the Rwandans appeared anything but spontaneous. The whole 2015 has been dotted with signs leading to this declaration. Many newspapers have been pushing for a constitutional referendum since February, because Rwanda still needed Kagame. In mid-March, the mayor of Kigali pointed out that the citizens were calling for a reform of the constitution. In late May, Parliament announced that 2 million people had signed a petition to give Kagame a chance to run for a third term for 7 years. After one month, the petition had reached 3.6 million signatures across the country. On 14 July, the Parliament voted unanimously on the principle of constitutional review and formed a committee to propose a national referendum. A month later, the report was submitted to parliament with evidence that only a dozen Rwandans had voted against the referendum. On 28 October, the parliament passed a new law that was to be submitted for referendum. This law assumed that the current president could run for another term in 2017. Then in 2024 - year zero of the constitution - the seven years would be replaced by five, renewable once. This ingenious mechanism enables Kagame to be likely president until 2034. Eventually, on December 18, 6.4 million Rwandans responded to the question: *“Do you agree with the constitution of the Republic of Rwanda which was amended this year of 2015?”* Of these, 98.9% said "yes". Only the small Democratic Green Party, which has no members in Parliament, submitted a petition to the Supreme Court, but it was rejected. Elections and public petitions in Rwanda were often criticized by human rights organizations. At each nomination, Kagame received at least 90% support. The small size of the country and its internal organization allow for extensive monitoring of discontents and opponents.

Barack Obama, during his official visits in Africa as US President, has often denounced the status of President for Life that is established in many African states. In 2009, in Ghana, he criticized leaders who "change their constitution to stay in power". In 2015, in Addis Ababa, he remarked that "no one should be president for life"²⁰⁷. The US State Department on 17 November widely criticized the Rwandan parliament's decision to amend the constitution and stressed that Kagame must honour his promise to retire in 2017²⁰⁸. On December 31, in the aforementioned speech, Kagame responded by opposing American legality, the Rwandan public petition and explaining the reasons why he agreed to remain in office along with his vision of the future. A passage in his speech reads: *“I do not think our aim is to have a President for life, nor is it what I would want. Sooner rather than later, this office will be transferred from one person to another in a manner that will serve a purpose, not*

²⁰⁷Full note of the White House and Obama speech: <https://obamawhitehouse.archives.gov/the-press-office/2015/07/28/remarks-president-obama-people-africa>

²⁰⁸ US State department note: <https://www.state.gov/department-press-briefings/>

*merely set an example, whether for ourselves or others*²⁰⁹. On January 2, the US State Department expressed “deep disappointment” and the day after Samantha Power, US ambassador at the UN tweeted: “*In Burundi, the Democratic Republic of the Congo, Congo-Brazzaville, Burkina Faso, leaders wanting to repeal constitutional limits to their staying in office were met with strong resistance. The president of Burkina Faso was ousted last fall; the president of Burundi was overruled, plunging the country into a violent crisis. In Rwanda, nothing of the sort. The authoritarian exercise of power is firmly established, especially in its ability to monitor and control local populations. Under such circumstances, with a campaign that was carefully controlled and put in place, it’s no surprise that the end result was a “popular victory”*”. Although I admit that Ambassador Power is right, one thing stands out immediately in the eyes of the reader when I write, March 2020: Burundi, DRC, Congo and Burkina Faso have been in perennial civil war, enormous economic difficulties with almost 80% of the population living below the extreme poverty line. Human rights in these countries are equally unregarded and these states are often affected by epidemics and humanitarian crises. Rwanda, on the other hand, is the African state with the highest growth, economic rights are widely respected in the country and corruption is lower than in Italy or Greece. Since the exercise of power and democracy have as their ultimate goal the happiness and well-being of citizens, a reflection leads us to ask ourselves: which of the two systems has the greatest shortcomings?

Kagame, in this regard, asked Western nations not to interfere in Rwandan affairs²¹⁰. Often when interviewed by the European and US media, Kagame recalls that Westerners have at the moment created nothing but problems in Rwanda and throughout sub-Saharan Africa and that they should stop interfering in the affairs of other states. The constitutional amendment was published in the Official Gazette on December 24, 2015.²¹¹ I will now try to analyse the changes that this amendment entails with the help of Filip Reyntjens, professor of Law and Politics at the Institute of Development Policy and Management (IOB), University of Antwerp. Article 101 amended states:

The President of the Republic is elected for a five (5) year term. He or she may be re-elected once.

While the previous one, enacted on 2003:

²⁰⁹Full article at: <https://theconversation.com/rwanda-paul-kagame-sur-orbite-jusquen-2034-53001>

²¹⁰ <http://times.mw/kagame-hits-back-at-us-call-to-step-down-at-end-of-term-in-2017/>

²¹¹ Official Gazette 24.12.2015 fully available at:

https://minijust.gov.rw/fileadmin/Law_and_Regulations/Official_Gazette_no_Special_of_24.12.2015__2__1_.pdf

The President of the Republic is elected for a term of seven years renewable only once. Under no circumstances shall a person hold the office of President of the Republic for more than two terms.

The duration of presidential terms is thus reduced from seven to five years; the number of terms remains limited to two. The emphasis “under no circumstances” has no constitutional significance. Although the Democratic Green Party invoked this to support its claim before the Supreme Court, the two-term limit is clear and unambiguous, and the emphasis was redundant. But, Chapter XI on transitional provisions contains an article that makes all the difference. Article 172 proceeds in three steps. Paragraph one states:

The President of the Republic in office at the time this revised Constitution comes into force continues to serve the term of office for which he was elected.

This provision is not extraordinary since it aims to prevent a vacuum in the presidential office. But it would have been more logical to give continuity to all the offices in place at the moment to ensure the right transition phase. The reality is that this paragraph lays the foundations for something more important, namely Kagame's stay beyond 2017. Indeed, the operative part of paragraph two provides that:

without prejudice to Article 101 of this Constitution (...) a seven (7) year presidential term of office is established and shall follow the completion of the term of office referred to in the first paragraph of this article.

While the legalistic quality of this provision is poor and could raise doubts as to the beneficiary of this exceptional seven-year term, it is clearly meant to apply to Kagame. So, paragraph two allows Kagame to run for a third seven-year term in 2017. The third paragraph states:

The provisions of Article 101 of this Constitution shall take effect after the seven (7) year term of office referred to in the second paragraph of this article

What this means is that after his third seven-year term in 2024, Kagame can stand for another two five-year terms. This implies that he could theoretically remain in office until 2034. As he was de facto leader since 1994 before formally becoming president in 2000, that would give him a 40-year presidency. Article 172 displays at least three peculiarities. The first is that the provision is tailor-made for one person, namely President Kagame. Constitutions are normally abstract and general.

This oddity was highlighted by the EU High Representative Federica Mogherini²¹²: “*The reform of a Constitution is a transformative process engaging all interests in society, which adjusts norms and rules with the aim of strengthening and adapting institutions to meet contemporary challenges. It is a legitimate expectation of a country to revise its governance. The adoption of provisions that can apply only to one individual weakens the credibility of the constitutional reform process as it undermines the principle of democratic change of government enshrined in Article 23 of the African Charter of Democracy, Elections and Governance*”. Second, that the revised text refers specifically to Kagame can also be deduced from another peculiar feature. This is the inclusion of a non-operative provision in the second paragraph of article 172 which contains the following passage: “*considering the petitions submitted by Rwandans that preceded the coming into force of this revised Constitution, which were informed by the particular challenges of Rwanda’s tragic history and the choice made to overcome them, the progress so far achieved and the desire to lay a firm foundation for sustainable development*”.

The references are clearly to Kagame's past. In other constitutions, such a sentence would have been placed in the preamble and not in the text since it has no normative value. A further oddity is Article 101, which is only applicable if Kagame decides to run again in 2017 and is elected. What would have happened if Kagame, for whatever reason, had not been able to stand for election in 2017? In that case, would Article 101 have entered into force in 2017? These three peculiarities are the consequence of a bizarre constitution-making process that was exclusively focused on Kagame remaining in office beyond 2017. The entire campaign leading to this outcome was extremely personalised, with the incumbent presented as unique and irreplaceable and, more generally, Rwanda highlighted as exceptional. This is not the foundation on which sound constitutional bases can be laid²¹³.

The Judiciary

The judicial branch hierarchy is as follows: The Supreme Court, high courts of the Republic, provincial courts, district courts, and mediation committees. The new Constitution of Rwanda also

²¹²Constitutional review in Rwanda, Federica Mogherini: <http://www.consilium.europa.eu/en/press/press-releases/2015/12/03-hr-declaration-on-constitutional-review-in-rwanda/>

²¹³ F. Reyntjens, “The changes made to Rwanda’s constitution are peculiar – here’s why”, The Conversation, January 28, 2016. Available at: <https://theconversation.com/the-changes-made-to-rwandas-constitution-are-peculiar-heres-why-53771>

ushered reforms in the judiciary such as new legislation, establishing new courts, procedures, structures, standards including academic and professional qualifications as well as regulatory and administrative frameworks. At this point it is also important to note that after the genocide, Rwanda faced a very special situation and needed special interventions to try genocide perpetrators. One of the innovations was the establishment of *Gacaca* Courts to try genocide cases. *Gacaca* Courts exact different penalties including compensation and community work (TIG), but most importantly emphasize two aspects of confession and forgiveness as a way to heal the wounds²¹⁴.

The Supreme Court

As part of the judicial reforms of 2004, the Supreme Court was restructured. The 2003 Constitution provides that the “Judicial Power is exercised by the Supreme Court and other Courts established by the Constitution and other laws.”²¹⁵ The Constitution determines that the Supreme Court is the highest jurisdiction in the country²¹⁶. The Constitution also confers the Supreme Court the task of coordinating and overseeing activities of Courts and Tribunals, while ensuring judicial independence²¹⁷. The law provides for a unified Supreme Court, contrary to the pre-2004 structure in which the Supreme Court was divided into sections. The Supreme Court is the highest jurisdiction in the country and its jurisdiction covers the entire national territory. It is headed by a President, and assisted by a Vice-president and twelve Judges, whose number can either be increased or reduced when necessary²¹⁸.

The High Court

The High Court has its seat in Kigali with four chambers in each province. The High Court has jurisdiction to hear cases on appeal decided in first instance by lower courts, specifically the ‘Intermediate Courts’ (Tribunaux de Grande Instance). The High Court handles cases of first instance

²¹⁴ E. Musiime, F. Kabasinga, Global Lex, Hauser Global Law School Program, New York University School of Law

²¹⁵ Article 140, Constitution of the Republic of Rwanda (O.G n° special of 4 June 2003, p.119), as amended in 2003, 2005, 2008, 2010

²¹⁶ Article 144, Constitution of Rwanda (2003), as amended in 2003, 2005, 2008, 2010

²¹⁷ Article 145, Constitution of Rwanda (2003), as amended in 2003, 2005, 2008, 2010

²¹⁸ Articles 1-3, Organic Law No. 01/2004 of 29/01/2004 Establishing the organisation, functioning and jurisdiction of the Supreme Court, Modified and Complemented by Organic Law n° 10/2005 of 28/07/2005 (O.G special n° of 25 august 2005); again Modified and Complemented by Organic Law n° 13/2006 of 21/03/2006, (O.G special n° of 28 march 2006) and the Organic Law n° 58/2007 of 16/12/2007, (O.G n° 5 of 1st march 2008)

in some specific criminal trials, such as treason and terrorism cases²¹⁹. Also, the High Court has jurisdiction to try the cases transferred/extradited to Rwanda by the ICTR and from other States²²⁰.

Other Courts

There are established Provincial Court in each Province of the country and a Court of the City of Kigali. There are established District, Town and Municipality courts respectively in each District, Town and Municipality in the country. Specialized Courts include the *Gacaca* Courts responsible for the trial and judgment of cases against persons accused of the crime of genocide and crimes against humanity which were committed between October 1st, 1990 and December 31st, 1994 with the exception of cases jurisdiction in respect of which is vested in other courts. The *Gacaca* courts were officially closed on June 18, 2012. Military Courts comprise of the Military Tribunal and the Military High Court. The Military Court tries in the first instance all offences committed by military personnel irrespective of their rank. The Military High Court tries in the first instance, all offences which constitute a threat to national security and murder committed by soldiers irrespective of rank. The Military High Court is an appellate court in respect of decisions rendered by the Military Tribunal. Rwandan cases are found in court records, there are no publications where they can be found, mainly because the legal system is based on the French civil law system, not the common law that relies on decided cases/precedence. Rwanda's legal system has evolved and can now be firmly referred to as a hybrid system that combines principles and practice from both the civil and common law systems.²²¹

The Judges and the appointment process

The process for appointing the judges of the Supreme Court starts with a recommendation by the President of the Republic. A candidate judge for the Supreme Court is elected by the Senate by absolute majority. Judges of the Supreme Court are appointed by a Presidential Order. The President

²¹⁹ Articles 17-18, 89-108, Organic Law No. 07/2004 of 25/04/2004 Determining the organization, functioning and jurisdiction of courts, Modified and Complemented by Organic Law No. 14/2006 of 22/03/2006, again Modified and Complemented by Organic Law N° 51/2008 of 09/09/2008

²²⁰ Article 1, Organic Law n° 11/2007 of 16/03/2007 concerning the transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and other states, Modified and Complemented by Organic Law N° 03/2009/OL. of 26/05/2009

²²¹ Musiime E., Rwanda's Legal System and Legal Materials, August 2013: <https://www.nyulawglobal.org/globalex/Rwanda1.html>

and the Vice President of the Supreme Court are appointed in this manner for a single, non-renewable term of eight years. The tenure of office for Supreme Court judges is not of a fixed duration.²²²

The qualifications for a judge of the Supreme Court is as follow:²²³

- judges who hold at least a bachelor's degree in law and have served as judges for at least eight years;
- advocates who have professional experience of at least eight years in practice;
- lecturers in faculties of law of universities with at least eight years' experience in the profession;
- prosecutors who hold at least a bachelor's degree in law and have served as prosecutors for at least eight years;
- persons who hold at least a bachelor's degree in law and have professional experience of at least eight years in any field related to law.

The period of professional experience of eight years is reduced to five years for holders of a PhD in law²²⁴. Since the justice sector reforms of 2004, the justice system has made impressive steps forward, in terms of both professionalism and further specialization of the judiciary. Also, other aspects have improved, such as the infrastructure of courts and tribunals, and the digitalization of the judiciary. Many laws and regulations are now available on the internet in three languages: Kinyarwanda, English and French. Until the judicial reforms of 2004, the vast majority of judges were non-lawyers. Only 74 out of 702 judges had a law degree. In 2004, all lay judges and prosecutors were replaced, except for a small group who were offered the opportunity to get their law degree. Now, all 281 judges in the judiciary have at least a bachelor's degree in law.²²⁵

Applicable Law

The Belgians imported criminal and civil law into Rwanda. It was decided that criminal law should apply to everyone and civil law only to whites. Customary law was used to solve Rwandan cases. From this it can be deduced that the current Rwandan legal system is a mix of German and Belgian civil law and customary law. Since 1994, many laws have been revised and adapted. These

²²²Articles 4-8, Organic Law No. 01/2004 of 29/01/2004 Establishing the organization, functioning and jurisdiction of the Supreme Court, as modified and complemented 2005, 2006, 2007

²²³Article 9, Organic Law No. 01/2004 of 29/01/2004 Establishing the organization, functioning and jurisdiction of the Supreme Court, as modified and complemented 2005, 2006, 2007

²²⁴ H. Roelof, "Rule of Law quick scan Rwanda: Prospects and Challenges", April 2012, Hill

²²⁵ Ibid

changes concern the enactment of a law, the organic law in force in the country and have established the organization and jurisdiction of the Supreme Court.²²⁶.

The role of the Ministry of Justice and Constitutional Affairs

The Ministry of Justice (MINIJUST)²²⁷ bears the political responsibility of ensuring that the Government's programs in the Justice Sector are successful and ensure close coordination among the various sub sectors. The institutions in the sector, though linked by the mission of Justice Delivery, are created by the constitution and are independently responsible for executing their programs, each of which forms an integral part of the common Justice Vision of the Country.

Fairness of trials in Rwanda

As far as trials are concerned, Rwanda can be described as a fairly safe country. Questions have been raised about this since 1994, when Rwanda started asking other countries to extradite possible genocide to the ICTR. In 2011, the ICTR began to ask Rwanda directly to carry out some cases, first of all that of Uwukindi²²⁸. This indicates a positive development in national justice. The main concerns the ICTR had in transferring cases to Rwanda concerned detention conditions, fairness of proceedings, respect for the right of defence, criminal structure and the jurisdiction of judges. The *ne bis in indem* principle is sufficiently guaranteed. The Rwandan government did its part to secure the right to try genocide killers. A very important step was taken in 2007 with the abolition of the death penalty²²⁹. Subsequently, Rwanda set up Mpanga Prison in accordance with international standards for those sentenced to life imprisonment. Since 2008, the European Court of Human Rights has been encouraging countries such as the UK, France and Sweden to extradite prisoners to Rwanda.

²²⁶ Musiime E., Rwanda's Legal System and Legal Materials, August 2013: <https://www.nyulawglobal.org/globalex/Rwanda1.html>

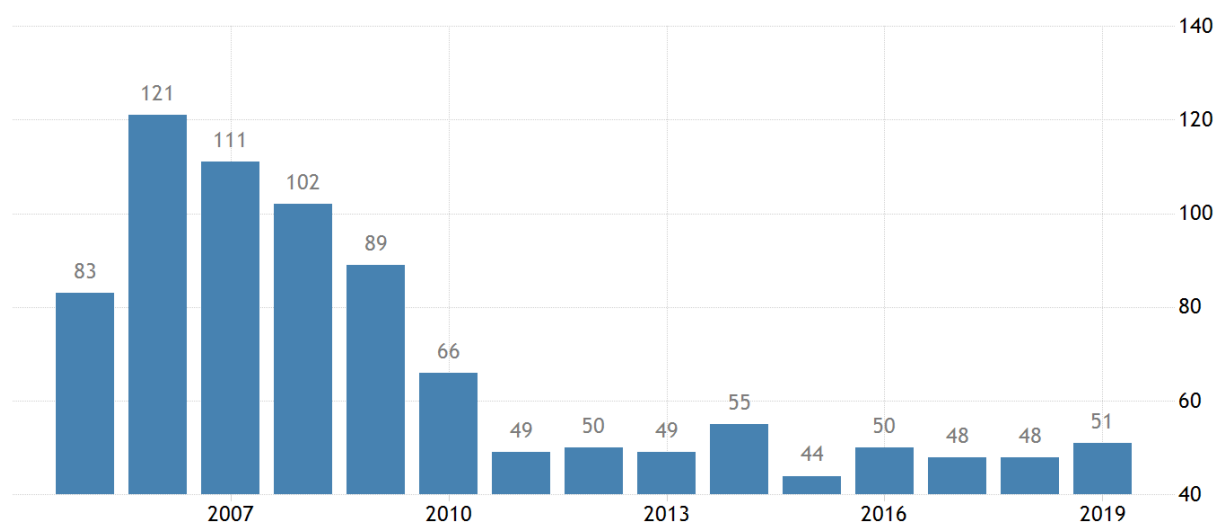
²²⁷ www.minijust.gov.rw

²²⁸ <http://www.buitenpostdewereld.org/untitled/nl--genocide/hoebetrouwbaar-zijn-de.html>

²²⁹ Organic Law No. 31/2007 of 25/07/2007 Relating to the Abolition of the Death Penalty; Organic Law No. 66/2008 of 21/11/2008 Complementing Organic Law 31/2007

The judiciary and the fight against Corruption

One of the aspects to which the government has paid most attention since the early 2000s has been the fight against corruption. Through the so-called "zero-tolerance policy", Rwanda has put in place a variety of standards that can position it as one of the best African countries in the international arena. Transparency International in its 2019 report places Rwanda in the 51st place. In the context of East Africa, Rwanda is far from the states with which it borders and stands as a small happy island in a much more difficult continental context. Uganda is 137th, Burundi 165th, Tanzania 96th and DRC 168th, out of a ranking of 180. In all of Africa, including the Arab states, only Botswana does better than Rwanda²³⁰. This year's findings reveal a slight decline in bribe prevalence from 2.08% in 2018 to 2%. 78.5% of the population considers corruption to be low in Rwanda while 81.9% admire and commend the government's efforts to prevent and fight corruption. The number of Rwandans who directly or indirectly demanded or offered bribe while interacting with an institution, according to the report, declined to 18.5% from 20.4% in 2018.²³¹ The table below represents the country's position in the Transparency International ranking over the last 15 years, which shows the incredible progress made by the government in this area.



Figur2 7 Transparency International Index 2020 - Rwanda

To achieve these prestigious results, the government has taken measures on several fronts. The Government has created some new institutions such as the Rwanda Public Procurement Authority, the Office of the Auditor General, the Ombudsman's Office, the Anti-Corruption Unit in

²³⁰ <https://www.transparency.org/cpi2019>

²³¹ E. Mugisha, "TI Rwanda launches Rwanda Bribery Index 2019", The New Times, 04.12.2019

the Rwanda Revenue Authority, the Rwanda Development Board, the National Bureau of Standards in charge of the quality of different types of importation in the country and the National Examinations Council which prepares and corrects different tests. Several laws have been put in place in order to fight corruption, particularly the Law No. 23/2003 approved on 07/08/2003 on prevention and repression of corruption and related offences. The penal code also shows the commitment to fight against corruption in articles 220-227. Other laws concerning specific bodies or sectors also include measures to prevent and fight corruption, such as the regulation of the Chamber of Deputies (article 38, Organic Law No. 06/2006) and of political parties (Organic Law No. 16/2003) as well as the deontological code of journalists and media. Rwanda has signed and ratified several international conventions including the UN Convention Against Corruption, the African Union Anti-Corruption Convention and the UN Convention against Transnational Organized Crimes²³².

The legislative

The Parliament

The Parliament of Rwanda is bicameral in the framework of a presidential form of government. It consists of two chambers: the Senate and the Chamber of Deputies. The Chamber of Deputies is renewed every five years and it is currently in its fourth legislature. In the chamber there are 80 deputies: 53 elected in accordance with Article 77 of the Constitution, 24 must be women (2 per province + city of Kigali), 2 members elected by the Youth Council and 1 by the Federation of Associations of the Handicapped. The senate is renewed every eight years and it is in its third legislature. It is composed of 26 members of which 30% must be women. 14 are elected by indirect suffrage, 8 are appointed by the president of the republic and 4 by the forum of political formations. Prior to 2003 the Parliament of Rwanda was unicameral. Former names are Legislative Assembly, National Development Council (French: Conseil national de développement) (1982–1994) and the Transitional National Assembly (1994–2003). We don't have to imagine the Rwandan parliament with the powers of a European one. The power is in the hands of the government and most of the deputies are from the RPF. It is used as legitimacy of the people's voice, but we can't say that it is independent from the central power.

²³² H. Roelof, "Rule of Law quick scan Rwanda: Prospects and Challenges", April 2012, Hill, p.38

The representation of women

The peculiarity of the Rwandan Parliament lies in the fact that although there are thresholds for the participation of women in parliament, these are permanently exceeded and often duplicated. Rwanda is the state of the world with the highest representation of women since 2013. In the world ranking updated to 1 March 2020 we see how the small African country is far ahead of the others.

Rank	Country	Lower or single House				Upper chamber			
		Elections	Seats*	Women	% W	Elections	Seats*	Women	% W
1	Rwanda	09.2018	80	49	61.25	09.2019	26	10	38.46
2	Cuba	03.2018	605	322	53.22	-	-	-	-
3	Bolivia (Plurinational State of)	10.2019	130	69	53.08	10.2019	36	17	47.22
4	United Arab Emirates	10.2019	40	20	50	-	-	-	-
5	Mexico	07.2018	500	241	48.2	07.2018	128	63	49.22
6	Nicaragua	11.2016	91	43	47.25	-	-	-	-
7	Sweden	09.2018	349	164	46.99	-	-	-	-
8	Grenada	03.2018	15	7	46.67	04.2018	13	4	30.77
9	South Africa	05.2019	395	184	46.58	05.2019	53	20	37.74
10	Andorra	04.2019	28	13	46.43	-	-	-	-
11	Finland	04.2019	200	92	46	-	-	-	-
12	Costa Rica	02.2018	57	26	45.61	-	-	-	-
13	Spain	11.2019	350	154	44	11.2019	264	103	39.02
14	Senegal	07.2017	165	71	43.03	-	-	-	-
15	Namibia	11.2019	96	41	42.71	12.2015	42	8	19.05
16	Switzerland	10.2019	200	83	41.5	11.2019	46	12	26.09
17	Norway	09.2017	169	70	41.42	-	-	-	-
18	Mozambique	10.2019	250	103	41.2	-	-	-	-
19	Argentina	10.2019	257	105	40.86	10.2019	72	29	40.28
20	New Zealand	09.2017	120	49	40.83	-	-	-	-

Figure 8 Interparliamentary Union Standing²³³

“The role of women in Rwandan politics is strong. Women have the same salary as men in every area. Public and private”²³⁴.

The representation of women in Parliament is a direct symbol of the importance that women have in society. A little by necessity, after 1994 women were the 'healthy' part of the country. following the 1994 slaughter, so many men (both Tutsis and Hutus) were killed, that the country's gender profile tilted heavily in favor of women - reportedly, by a 60-40 percent basis. Women, with

²³³The entire standings: <https://data.ipu.org/women-ranking?month=3&year=2020>

²³⁴ Interview with Antoine Mugesera, July 2019

the exception of those who had been raped, had to reorganize the foundations of social life, in the countryside to work the land, in markets and homes. From 2000 onwards there was also equality in education and women had access to all the school and education services in the country. Rwanda's economy has risen up from the genocide and prospered greatly on the backs of our women, bringing women out of the home and fields has been essential to the rebuilding. In that process, Rwanda is becoming a nation that understands that there are huge financial benefits to equality. Indeed, there are many reports of women in Third World countries, including Rwanda, making better decisions than men with regard to household investments, family finances, etc. Winnie Byanyima, director of the United Nations Development Program's gender team says: “We have overwhelming evidence from almost all the developing regions of the world that investment in women make better economics”²³⁵

The Executive

The President: Paul Kagame

“President Kagame, there is a long tradition of leaders in Africa who have been in office for three decades. How do you explain your victories with 90%,95%,99%? It is a true democracy?”

“If you want to measure everything against the western value system, I tell you that the western model doesn't provide solution to everything. Other people, other places, other countries have their value system as well and they are answerable to their own people. Every context is different. Democracy is not one-size-fits-all. Even in the west”

Rwanda is a presidential republic headed by Paul Kagame. The 2003 Constitution established that the president can remain in office for 7 years, but the 2015 constitutional referendum shortened the mandate to 5 years. Despite this, as we have seen the applicability of this referendum will take place from 2024. Paul Kagame won the elections in 2003, 2010 and 2017 and is the undisputed leader of the RPF and the nation. Born in the southern province in 1957, the youngest of six children ²³⁶ just

²³⁵For the full article: <https://www.ibtimes.com/rwanda-only-government-world-dominated-women-213623>

²³⁶ Waugh, Colin (2004). *Paul Kagame And Rwanda: Power, Genocide and the Rwandan Patriotic Front*. Jefferson, N.C.: McFarland.

two years old, Kagame fled to Uganda with his family when the Hutus took power with the departure of the Belgians. At the age of 23 Kagame joins the Ugandan army alongside the revolutionary Museveni who wins the war and becomes leader. Rwandan refugees in Uganda had no rights under the previous government and Museveni had promised them help in exchange of military support for his cause. Kagame ended the war in Uganda and joined the Rwandan Patriotic Front that had been formed militarily in the refugee camps where the Rwandans lived. Very young but with strong leadership skills Kagame had already distinguished himself in Museveni's army.

Simeon Wheeler, now Dean of Political science at the University of Rwanda, tells of his time in Uganda. *"When I was working in Uganda with street children 36 years ago, I was also working with Tutsi refugees who had fled the persecutions of 62 and 73. The military leader (Rwigyema) was seen as an idol to emulate, all the children played at being him, everyone wanted to be part of the RPF"*. RPF General Fred Rwigyema, as we saw in Chapter 1, died after three days of fighting in 1990. Kagame dealt with the peace process in Arusha that led to the 1993 national unity government (never put into practice). Following the fall of the Habyarimana plane and the beginning of the genocide, Kagame led the army and liberated the country. Initially he was Vice-President and Minister of Defense but *de facto* leader and from 2000 onwards, President. The face of Kagame is the face of the country that with harshness, order and discipline came out of the devastation of the genocide. His methods have been criticized, he has been accused by human rights organizations of suppressing the opposition and controlling the press.

"When the FPR invasion took place in 1994, there could have been a counter-genocide. But this was not because of Kagame's strong will. After the liberation, many Tutsis believed that he would be given back the lands confiscated 30 years earlier. But Kagame was immediately clear in this and in 1997 he took the first real step towards reconciliation: he guaranteed those Hutus who had fled to the Congo in the meantime that they would be given their lands back and denied them to the Tutsis in the Diaspora who thought they had some property they would not find"²³⁷. Even today many anti-Kagame Tutsis still live in Uganda because they do not share his choices. When he came to power, we all expected a Tutsi dictatorship, but in reality, he did everything he could so that there would be no inequalities and a true unitary state was created"²³⁸. During the first six years (94-00) Kagame focused mainly on security, army control and foreign policy. In 2000, the Hutu rebels were less of a concern and therefore the incumbent President Bizimungu was 'ordered' to step back and resign.

²³⁷ The Tutsis of the Diaspora include in particular those who fled in 1959 following the regime change.

²³⁸ Interview with Simeon Wheeler, July 2019

There are conflicting opinions particularly among historians such as Prunier²³⁹ and Kinzer²⁴⁰ about the resignation but in essence nothing has changed since Kagame was already the leader.

Since then, 20 years have passed and Kagame's focus has been maintained on state control, economic recovery, poverty alleviation, compulsory education and the development of rural areas. What sets Kagame apart from other African leaders is the vision. Everything he does and every project is aimed at something for the future and important results have often been achieved. Over the years, especially in his year as president of the African Union, Kagame has strongly criticized African leaders who, in order to make friends with Western states and gain favors, give up their resources and at the same time he has been very critical of the way the West enters Africa, wanting to impose its economic and political model. He had words of praise instead for China, which has started a huge investment plan in Africa comparable to a giant Marshall plan and builds roads, hospitals and schools. Under the Kagame presidency, African states have joined together in a common market and a free trade area that will begin to be active in 2020. Human rights NGOs and many critics have accused it. His harsh and often brutal ways have made him one of the strongest and scariest leaders in Africa. In a 2013 interview for The New York Times after hearing all the accusations made against him during his then 13 years as president, Kagame said: *"I have all these names associated with me, some of which I accept, others which are not fair. God created me in a very strange way"*²⁴¹.

The Vision 2020

In 2000, just 6 years after the end of the genocide and with an entire country basing its economy on external aid, Kagame proposed a 20-year plan to bring the country from disruption to be the first middle-income country in Africa. The plan was very ambitious first of all because until then only five-year or short-term plans had been proposed in the history of Rwanda and the lack of internal security did not allow the population to focus on development, having to think about daily livelihoods. Vision 2020²⁴² inspired Rwandans with concrete goals that would significantly improve their everyday life within a generation. With the help of experts from rapidly developing countries (China, Thailand, Singapore), the government set 47 targets for 2020. The population with access to clean

²³⁹ Prunier, Gérard (2009). *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe*. Oxford: Oxford University Press

²⁴⁰ Kinzer, Stephen (2008). *A Thousand Hills: Rwanda's Rebirth and the Man Who Dreamed it* (Hardcover ed.). Hoboken, N.J.: John Wiley & Sons.

²⁴¹ Full interview: <https://www.nytimes.com/2013/09/08/magazine/paul-kagame-rwanda.html>

²⁴² <https://repositories.lib.utexas.edu/bitstream/handle/2152/5071/4164.pdf?sequence=1>

water was to increase from 52% to 100%, average longevity from 49 to 66 years, average annual income from \$220 to \$1240, bringing the population living below the extreme poverty line from 66% to 20%, increase child mortality from 107/1000 to 27/1000. To do so, the government found six interwoven pillars, including good governance and an efficient State, skilled human capital, vibrant private sector, world class physical infrastructure and modern agriculture and livestock.

New programs were carried out to promote gender equality, public education in English and the "One Family, One Cow", a program in which the government assigned one cow to every family of farmers who needed it, were carried out. In Africa the cow is a symbol of wealth because it produces milk every day, a source of important minerals and proteins, but above all it produces the manure that makes the land more productive. Going around Rwanda and looking at the hills, you can see who has a cow and who doesn't because of the color and the luxuriant crops. In 2011, the government released a mid-program report in which it tracks the first results²⁴³. Twelve goals have already been achieved and others have been modified (climate-change policy). Since 2000, Rwanda has maintained a stable economic growth rate of over 7%, has almost completely detached itself from the dependence on foreign aid and ranks in the top positions for livability, security and ease of doing business in Africa. The population, which has been studying and working in English since 2008, is working tirelessly to build a better country. As the population grows, however, the biggest problem for the government will be managing unemployment, the rate of which is set to rise. Young people no longer want to work in the countryside as their parents have done, and they aspire to important jobs. In this context, the government will have to be able to guarantee jobs for everyone, pumping external resources and capital into the country and thus attracting large capitalist companies.

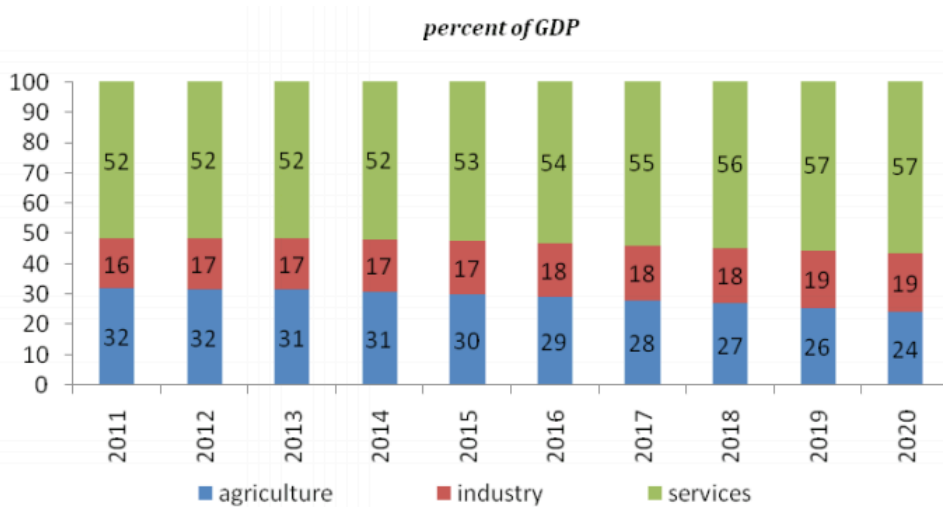


Figure 9 Prospected division of GDP from 2011 to 2020 – MINECOFIN

²⁴³ http://www.minecofin.gov.rw/fileadmin/templates/documents/NDPR/Vision_2020_.pdf

The Catholic Church-State relation

The role of the Catholic Church during the genocide was terrible and salvific at the same time. The church has been a very important institution in Rwanda since the beginning of the 20th century when the 'white fathers' arrived in the country. But as an institution made up of men, it should be considered as such. Although brief, it is necessary to make an analysis of the role of the Catholic Church in reconciliation. The first missionaries who arrived in Rwanda created both churches and institutions, such as small public offices and schools. Some words still used today are German and Kinyarwanda reads like German. The Belgians to settle in the country followed the indications of the missionaries who had already been present in the territory for 30 years. The church was seen by the local people first and foremost as a place where there was always a guaranteed meal, something not taken for granted in early 20th century Rwanda. In addition, the church debunked taboos in society. It gave women the opportunity to leave the house alone, introduced the wage based on working hours, the courts. In its schools, the church, formed the ruling class that, studying European freedoms, began to have feelings of independence. Although with Kayibanda the role of the church remained important in governmental dynamics, with Habyarimana this power disappeared, and the religious were totally subject to the will of the state. During the genocide, however, every priest went his own way. Some priests tried to save as many people as possible within their schools, others took an active part in the massacres. In the school in Nyamata, 15 km from Kigali, a priest saved 5,000 people in his church and then locked them inside and set fire to the building. It was one of the worst massacres of 1994. Simeon Wheeler, Dean of Political Science at the University of Rwanda, commented in a recent interview: *"The role of the church was terrible. No one from the Vatican has yet taken responsibility. In 1994 there were nuns who killed children and priests who burned churches with faithful inside refugees. Many converted to Islam, which remained outside of it during the genocide"*. Every man who was a priest or not responded only to his own conscience during those 100 days and not to the institution he represented.

After the genocide, however, the church and the parishes were a point of reference, especially because many international aids passed through them. In this regard I would say that it was difficult to preach charity and love in such a situation but at least the presence of the church was reassuring. The church restored schools, found teachers and organized health care. *"I remember September '94. In Nyundo when we returned to the seminary everything was destroyed. There were no funds, the banks weren't working. Some funds came from abroad, others were found among ordinary people. People were distrustful of God. They said, where was God during the genocide? Even today there is*

still a lot of difficulty in getting people to join the Catholic Church. The government had nothing, not even money to pay salaries. They paid with rice and beans”²⁴⁴.

The role of the church in reconciliation has joined the Christian discourse of forgiveness. Some of the teachings of the Bible pointed in the same direction as government policies, so the help was both practical and moral.

Illiberal state-building?

Generally, Rwanda is carried as a success story for peace and state building. The state had collapsed, the infrastructure had been completely destroyed, the workforce had been killed or the crimes had been committed. Rwandan reconstruction was carried out by the victors, the RPF who liberated the country and put an end to the genocide. In the reconstruction, the party, with strict measures, tried to keep out as much as possible the Europeans, guilty of the colonization and racial division and the UN, who had turned his heads in the genocide. The reconstruction of Rwanda has not been described by scholars as 'liberal' but as hybrid and sometimes even illiberal²⁴⁵. The peace brought by illiberal regimes is, however, historically weak and often leads to new conflicts. In Rwanda, on the other hand, peace remains after 25 years and the economic level of the country is growing more and more. What is the truth then?

Ricardo Soares de Oliveira defines illiberal peacebuilding as a post-conflict reconstruction process directed by local elites diverging from the precepts of liberal peace. Oliveira lists 10 characteristics that distinguish illiberal peacebuilding:

- Military victory;
- Hegemonic election-running, designed to earn international support yet not representing a danger to the regime;
- Secretive formal or informal structures for running the reconstruction process;
- Reconstruction opportunities distributed among insiders and promotion of an oligarchic capitalism;
- Constitutional change to extend presidential powers and strengthen the status quo;
- Penetration in civil society organizations and the media;
- Acceptance of the situation by western donors who carry on business as usual;
- A high-modernist vision and technocratic mindset;

²⁴⁴ Interview with a priest who prefers to remain anonymous. July 2019

²⁴⁵ Waldorf L., Rwanda's illiberal peace-building, *Afriche e Orienti* n. 14, 2014

- General amnesty;
- Peace dividend that favors the powerful, while poverty reduction is not a priority;

Post-conflict Rwanda may certainly fall within some of these parameters, but one must always be lucid in judging situation by situation. These parameters are not applicable to all countries indiscriminately because each country has its own history and past. To consider where a country is in its democratization process, one must always evaluate the starting point. And Rwanda in this case cannot be subject to Western parameters. The history of the country is not the same as that of Canada or New Zealand, which were born democracies. Speaking with the Rwandans, some people cannot believe that there has been peace and prosperity in their country for 25 years, that AIDS is slowly disappearing and that the forces of law and order can always be trusted. Women in Kigali and the countryside can walk around alone at night and education is free for all. None of the neighboring countries can boast such progress, and apart from the Congo, none of the others has had a history even remotely so bloody. Paul Kagame, with all the faults and accusations attributable to him, has a vision for his country. In 2000, the government launched the 2020 vision and many of the objectives were achieved in advance, and now those for the next decade have been published.

In an interview, the philosopher Isaie Nzeimana thus rejected my questions about the militarization of the state:

"The African man needs the figure of the leader. Tradition and society as a whole are built this way. In Rwanda there is one person in charge every 5 houses, who has one boss, who in turn has another boss, who has another boss, all the way to Kagame. It may seem like a highly militarized structure, but this is the African social structure, and it was like that when the Europeans arrived".

According to James Scott²⁴⁶, most state projects of social engineering are underwritten by a high-modernist ideology, which he describes as uncritical and unscientifically optimistic about the possibilities for the comprehensive planning of human settlement and production. The RPF has carried out social, political and economic projects like no other after a genocide including the most incredible transitional justice experiment in history: the *gacaca*.

The government's declared goal was to reshape, reform Rwandan society and individuals. As Kagame said: "We are inculcating new Rwandan perspectives, not ethnic ones" How? With Ingando, Itorero, Ndi Umunyarwanda.

²⁴⁶ Scott J.C., 'Seeing like a state: how certain schemes to improve the human condition have failed, Yale University Press, New Haven, 1998

Rwanda, as we have seen in these last two chapters, has embarked on a guided process of transitional justice and constitutional building that has taken the country to unimaginable socio-economic levels in the aftermath of the genocide. The country has a stable economic growth rate of around 8%, but its population continues to live with the ghosts of the past. How has memory been managed in the country? How important is the memory of the victims and the atrocities in a society that has to rebuild itself? Can the memory allow that such atrocities will not be repeated in the future? In the next chapter I will address these questions and try to answer them. I will use comparisons with the Holocaust and try to see how the Jews kept the memory of the Holocaust alive and how indeed, the Rwandans did. I will mainly use the texts of Hannah Arendt and Avishai Margalit for analysis.

Key Constitutional Developments timeline from 1991

1991: A constitutional revision reintroduced multi party politics. This constitution upheld the principle of separation of powers and the rule of law.

1994 October: A period of reconciliation and justice began with the establishment of the International Criminal Tribunal for Rwanda (ICTR) and the reintroduction of *Gacaca*, a traditional village court system.

2000: Parliament elected President Paul Kagame, as president under the transitional government.

2001: Elections to choose members of the *Gacaca* courts begun. The courts were to reduce the backlog of genocide cases in the ICTR.

2003 May: A national referendum was conducted, which brought about the current constitution replacing the transitional constitution which had been in place since 1994.

2003 August: Rwanda held its first presidential and parliamentary elections since the genocide and Paul Kagame gained victory. It was also the first multi-party elections in decades.

2003 October: The first multi-party parliamentary elections were held where President Kagame's Rwandan Patriotic Front won an absolute majority. European Union observers said the poll was marred by irregularities and fraud.

2005 July: Government began a mass release of 36,000 prisoners that had confessed to involvement in the 1994 genocide.

2006 January: The present borders were drawn with the aim of decentralizing power and removing association with the old system that had fostered the genocide.

2006 November: Rwanda and France diplomatic ties were broken when a French judge issued an international arrest warrant for Kagame on grounds that he was involved in bringing down Habyarimana's plane.

2006 December: Father Athanase Seromba a Roman Catholic priest was convicted for his involvement in the 1994 genocide. The International Criminal Tribunal sentenced him to life in prison.

2007 February: 8000 prisoners accused of genocide were released in a bid to reduce overcrowding in prisons.

2007 April: Former president, Pasteur Bizimungu released from jail three years into his 15-year sentence after receiving presidential pardon.

2007 July: Rwanda joined the East African Community.

2007 November: Rwanda signed a peace agreement with the Democratic Republic of Congo. Under which DRC was to hand over those suspected of involvement in the 1994 genocide to Kigali and the International Criminal Tribunal for Rwanda.

2008: Parliamentary elections conducted, resulting in 45 female deputies; a development that made Rwanda the only country with a female majority in a national parliament.

2008 October: Rwanda officially decided to change its education system from French to English partly to reposition itself as member of the largely English-speaking East African Community.

2009 November: Rwanda joined the Commonwealth.

France and Rwanda restored diplomatic ties, three years after they were severed over disagreements about responsibility for the 1990s genocide.

2010 February: French President Nicolas Sarkozy paid an official visit to Rwanda to mark reconciliation after years of accusations over the genocide.

2010 April: The government announced a review of the "genocide ideology" law however, it continued to use this law and the timeframe for review remained unclear. Opposition leader Victoire Ingabire Umuhiza, who planned to run against President Kagame in the August elections, was arrested and her lawyer later detained under the "genocide ideology" law.

2010 August: Elections held and President Kagame re-elected for a new term.

2010 October: Two men were convicted of Jean-Léonard Rugambage's murder and sentenced to life imprisonment. Rwanda promulgated a law on "life imprisonment with special provisions" this replaced the death penalty and requires prisoners to be kept in individual cells for up to 20 years (solitary confinement). The law also necessitates that communication with a lawyer be done in the presence of a prison guard.

2010: Transparency International ranked Rwanda as the 66th cleanest out of 178 countries in the world and 8th out of 47th in Sub-Saharan Africa. It was also named the world's top reformer in the World Bank's Doing Business Report 2010.

2011 June: Former Rwandan Family Minister Pauline Nyiramasuhuko became the first woman to be found guilty of genocide by an international court.

2012 March: Parliament adopted a new law to govern the electoral procedure of Rwanda's representatives to the East African Legislative Assembly (EALA). The law was voted on and got a 56 out of 62 positive response.

2012 March 22: A report compiled by Turkish law makers identified Rwanda as having one of the best constitutions in terms of gender equality worldwide. In Rwanda women constitute 56% of the Chamber of deputies.

2012 March 27: The Chamber of deputies finally approved new media draft bills following a heated over some bills. Some clauses such as article 6 (forbidden publications) raised concerns among some members of the house with some MP's requesting that the clause be removed as it tramples on people's freedom of speech and expression.

2012 March: Parliament adopted a new law that will govern the electoral procedure of Rwanda's representatives to the East African Legislative Assembly (EALA). The law was voted on and got a 56 out of 62 positive response.

2015 December 18: A referendum approves an amendment that would allow President Paul Kagame to run for a third term in office in 2017, as well as shortening presidential terms from seven to five years, although the latter change would not come into effect until 2024. It was approved by around 98% of voters.

2017 August 4: Kagame wins the elections with 98% of the votes.

2018 February: Kagame starts a 1-year mandate as President of the African Union.

~ CHAPTER FOUR ~

The role of memory and reconciliation in a post-genocide society

*“Resentment is like drinking a poison
and hoping it will kill your enemies”*

Nelson Mandela

Introduction

After analyzing the events that led to the genocide and the transitional justice path that followed, in this chapter the attention will be devoted to what has been the importance of memory in the reconciliation process and what responsibilities memory has today in Rwanda. Memory in post-genocide societies plays a fundamental role within local communities. In Rwanda the place where memory found its space have been the *Gacaca* courts. Within the people's courts, for the first time, the opportunity was given to speak to the victim in front of the murderer. One of the main objectives pursued by the Rwandan Government was certainly forgiveness. Rwanda and Mandela's South Africa were the only African countries where political and social theories, focused on the importance of forgiveness within a criminal legal process as opposed to the usual Western retributive justice, were directly implemented. Martha Minow addressed adequately why western justice punishment is part of the problem. Lawyers and judges often underestimate the means that the law itself has to achieve forgiveness when the principle of forgiveness should be the central point of a modern society²⁴⁷.

Forgiveness among individuals is also supported as we will see later by every religious and philosophical tradition and now there is also medical evidence showing the physical benefits of letting go of resentment and anger. *Gacaca* was the largest experiment in forgiveness as well as transitional justice in the history of mankind and the fact that it was a very small third world country that carried it out is remarkable. Of course, the memory carried out from within *Gacaca* was not always the real one. There have been proven cases of lies. Often these gaps in the system have been due to the inexperience of the judges, but if one should give an overall assessment of the *Gacaca* project that

²⁴⁷ Minow, M., *When should law forgive?*, W W Norton & Co Inc, New York, 2019.

lasted almost 10 years it would be more than positive. The blurred memory of the victims has often been filled by the stories of the executioners.

"I knew my father had died when I was only three years old," Paul told me, "After more than 10 years I discovered that the story of my father was being told in the *Gacaca* of a village near mine. I went to listen to the one who had killed him"²⁴⁸. Listening to the story of the murderer's memories of a family member certainly does not bring forgiveness but it can begin that long healing process much more useful for the victim than for the perpetrator and above all allows the victim to reconstruct the puzzle of his memory.

The *Gacaca* method also brings to light a revolution in its own way in the African continent. Those who admit their guilt, completely revealing what they had done, incur a minor penalty. If he had decided to rebuild the house of the victim he had destroyed or, for example, to take care economically of the children of the one who had killed his sentence would have been further reduced. Therefore, the *Gacaca* have a triple effect:

- They widen the collective and individual memory
- They begin the healing process that will eventually
- Lead to forgiveness.

While at the same time a few kilometers from Rwanda the UN ICTR focused on punishment, forgiveness as a legal philosophy played a fundamental role in Rwandan courts. The difference in the memory within the trials between the African method and the Western method can be found in the African concept of '*Ubuntu*'²⁴⁹ which means 'humanity' and brings back to an inclusive sense of community based on respect for the individual because the individual is part of the community. Ubuntu is anything but soft on crime and bases its being on respect for human rights and pushes for the rigorous collection of facts and memories through the testimony of the victims and the confessions of the criminals who have been granted amnesty by the prosecution. The attention given by the court to the victims gives them respect, which is essential for the recovery of a community. However, Minow says in her analysis that victimhood could speed up justice and granting amnesty in return for the truth could hinder the goal: forgiveness²⁵⁰. It is essential to "mention names" within the *Gacaca* because the physical identification of the perpetrator or victim destroys the secrecy that generated impunity. In fact, the impulse to forgive could be as dangerous as the desire for vengeance.

²⁴⁸ From a personal interview I had during the Independence Day celebrations. July 1, 2019. Paul is a fictional name.

²⁴⁹ The term Ubuntu was introduced to the South African TRC by the Nobel Peace Prize laureate Desmond Tutu, Archbishop of Cape Town.

²⁵⁰ Minow, M., *Between vengeance and forgiveness*, Beacon Pr, Boston, 1999

The importance of memory in those places that have suffered tragic events has not always been adequately addressed throughout history, and the cultural level of those who have suffered violence has often been a determining cause. Galimberti during a debate on TV told that in a meeting he asked an Armenian consul "Why was the Armenian genocide so difficult to be recognized compared to the Jewish one?" and he replied "Because Jews are much more educated than we are"²⁵¹. In fact, the Jewish people have been able to create a common and collective memory thanks to their thinkers, philosophers and historians and above all thanks to the high degree of literacy of their members. Levi, Harendt, Margalit, were able to theorize and narrate. The entire Jewish state, having been established in the aftermath of the genocide, has laid its foundations in collective memory. The importance that the world has turned and continues to turn to the Shoah every year on the anniversary of the liberation of Auschwitz is unparalleled. Books, theatre, filmography, memorial days, and all other projects have been made possible for the socio-economic and cultural level of the Jewish people. Few people are aware of the genocide carried out by the Khmer Rouge in Cambodia in the 1970s, the Armenian genocide committed by the Turks, the Rwandan genocide, the Darfur massacres of the early 2000s. Even the genocide of the Bosnians, which took place in the heart of Europe in the 1990s, when news was already travelling in real time on television's screens, is in any case less remembered than the Shoah, because the cultural level of all these populations is lower than the one of the Jewish people. Remembering is painful but necessary, and in order for remembering to be a positive act, there is a need to create an ethic around celebrations and memorials. The ethics of memory and its importance allow the victim to reconcile with his executioner and simultaneously create a shared memory.

The Jews, for their part, have not had the opportunity to apply the processes of retributive and transitional justice as happened in South Africa, Latin America and Rwanda and we have already discussed this in Chapter 2.

Post-1945 Europe

In Europe, in the social and political reconstruction that followed the Second World War, attempts were made to wipe out what had happened and what some peoples, especially the Italians and Germans, had committed in a short period of time. In Italy in particular, a psychology of self-

²⁵¹ Otto e mezzo, 11/01/2020, min 29:10. Available at <https://www.youtube.com/watch?v=elUxvdTTGfE>

absolution has spread. The transition process practically did not take place and several people who had recognized themselves in the fascist regime for twenty years, suddenly repudiated every form and mechanism of it. The theme that characterized the transition of Italians from fascism to democracy has also been neglected for a long time by historians²⁵². The propaganda wanted to paint a country that had remained immune to fascist contagion²⁵³, they tried to erase the consensus that fascism had had in the Italian society during those two decades. However, the Italian case is not unique at the European level. Indeed, as De Gasperi did in Italy, also De Gaulle and various governments of the National Front dominated by the Communists in Eastern Europe considered it necessary to communicate to their citizens that their suffering was the product of the action of the Germans and a few traitorous collaborationists. These governments used to present themselves as the saviors that had suffered and resisted heroically the foreign invaders and, for this reason, their duty after the war was over was to punish the traitors and to devote themselves to post-war objectives, to put their faith in constitutional regimes and leave the war behind²⁵⁴.

Therefore, as Judt defines it, a collective amnesia was created, this was necessary for the construction of new founding myths, in the Italian case the myth of the partisans. In few years, Europe after been dominated by dictatorships has launched itself into the processes of European integration. Only in Germany there was a barely too marked hint of international criminal justice with the Nuremberg trials. The effects of the collective assumption of guilt between Italy and Germany were, in the following years, very different. In Germany all the symbols of Nazism have been erased and in the center of Berlin there is a huge memorial for the victims of the Holocaust. In Italy instead, for example, in front of the Olympic stadium in Rome, there is still a huge obelisk with the inscription "Mussolini Dux", and other symbols of the regime can be found all over the country in squares, streets and facades of public buildings. The post-atrocity courts were denied to the Jews, who had only one case of criminal justice, that of A. Eichmann tried in Jerusalem in 1961 after his capture by Mossad in Argentina. A great difference between Jews and Rwandans lies in the fact that the Jews were freed by the Americans and the Russians while the Rwandans were freed by Rwandans in exile, friends and relatives of those who had suffered the massacres. Remuneration in the case of the Jews manifested itself in the form of the concession of a nation state, in retrospect one of the most geopolitically questionable choices in history.

²⁵² La Rovere, L., *Gli intellettuali italiani e il problema delle generazioni nella transizione al postfascismo*, 2012, messo online il 26 novembre 2012, p. 1

²⁵³ Focardi, F., *La guerra della memoria. La Resistenza nel dibattito politico italiano dal 1945 ad oggi*, Roma-Bari, Laterza, 2005.

²⁵⁴ Judt, T., *The Past Is Another Country: Myth and Memory in Postwar Europe*, in I. DEAK – J.T. GROSS – T. JUDT (a cura di), *The Politics of Retribution in Europe: World War II and its Aftermath*, p. 317.

We have already seen the intrinsic relationship between history and memory, in this regard it is right to mention the “duty to remember” that emerged after the Second World War through the Nuremberg²⁵⁵ criminal proceedings, the trial in Israel of Adolf Eichman²⁵⁶ and Ivan Demjanjuk (1986-1988)²⁵⁷, or the French trial of Klaus Barbie (1987)²⁵⁸.

The combination of all these trials was useful in creating the legal concept of genocide which became central to conceptualizing past mistakes and led the General Assembly of the United Nations to draft the Convention on the Prevention and Punishment of the Crime of Genocide on December 9, 1948 with the General Assembly Resolution 260.

Rwanda

In the Rwandan case, on the other hand, the whole system of transitional and retributive justice has been put in place. Once again, the biggest problem with the international recognition of the Rwandan genocide lies in the fact that the memory of the events was often carried out not by the Rwandans, but by the French, British and Americans. The texts are mostly written by French authors, while Hollywood was looking for a new Schindler and invented Hotel Rwanda by changing the reality of the facts and the story of Paul Rusesabagina²⁵⁹. The ICTR itself was directed by Westerners and no Rwandan judge was on the board of prosecutors. The memory process in Rwanda was also carried out by the winners who were at the same time the martyrs, the Tutsis of the RPF. Instead of creating a shared memory, in Rwanda memory was imposed from above. Even today, most of the blame still lies with the Belgian colonists who divided the country, forgetting that the atrocities were committed by the Rwandans Hutus on the Rwandans Tutsis. A second chapter that has been completely forgotten is that of the massacres carried out in the early post-94 years by the RPF on Hutu refugees. The number of victims is reported by some to be as high as 20,000. But no wonder, on the other hand, the same thing happened after the Second World War when the list of accused in Nuremberg was highly

²⁵⁵ Bazylar, M.J., *The Holocaust, Nuremberg and the Birth of Modern International Law*, in Bankier, Michman, *Holocaust and Justice: Representation and Historiography of the Holocaust in Post-War Trials*, Jerusalem, New York and London, Yad Vashem, Berghahn Books, 2010

²⁵⁶ Arendt, H., *Eichmann in Jerusalem: A Report on the Banality of Evil*, Penguin, New York, 1994, first published in 1963

²⁵⁷ Teicholz, T., *The Trial of Ivan the Terrible: State of Israel vs. John Demjanjuk*, St. Martins, New York, 1990

²⁵⁸ Morgan, T. *Voices from the Barbie Trial*, The New York Times Magazine, 2 August 1987, available at: <http://www.nytimes.com/1987/08/02/magazine/voices-from-the-barbie-trial.html>

²⁵⁹ Hotel Rwanda, Terry George, Lions Gate Films, 2004.

selective and the crimes committed by the allies were never prosecuted. As Marta Minow claims, all trials are subject to politicization. The party in charge of the country in Rwanda, has imposed its truth and has not enough focused on the development of a collective memory compared to what it has done on economic development.

In Kigali there is the only real memorial of the genocide, built on a 250,000 bodies mass grave. Each city has its own place of memory which is usually made in correspondence of the places of the massacres. However, it is hard to talk about memorials, these places should be instead relegated as simple places of prayer and remembrance where family members go to mourn their deceased loved ones. These have little in common with memorials in Europe or with the Kigali Memorial itself. An interesting project has been set up in the country, this aim to transform the places of remembrance present in five cities into real museums that can make visitors and future generations understand the history of the country. The project is led by two Italian professors of architecture at the University of Rwanda, whose objective is to revitalize these places and transform them into centers of study as well as memory.

In Rwanda the place where memory has been carried on most of all are certainly the *Gacaca* courts. This people's courts have been active for a decade and have tried about a million cases. Each village had its own court, and on weekends for ten years, they held trials. During the hearings the whole community could listen to the voices and stories of the protagonists, victims and executioners, who told the story in their own way. Although it was then the judges who established the punishment or the compensation, the narratives contributed to the formation of what is called collective memory. Even today, traveling around the country and talking to people, when asked to tell what happened in those days, references often run to *Gacaca* and stories not lived in first person but heard later on the grass.

Gacaca has also helped to eliminate confusion and grey areas. A mother could recognize who had killed her son, could be found guilty until then not suspected. Therefore, a collective memory was formed within the communities, probably different from the official one but which unified the memory of small communities. At the moment, therefore, in Rwanda we can talk about several collective memories: one is the national one, given by the government and the others are those of individual cells, villages, communities.

Another action taken by the government after 1994 was to change the names of some of the most important cities to mark discontinuity with the past. So, Gisenyi became Rubavu, Huye turned into Butare, Ruhengeri became Musanze and Kibuye-Karongi, Gitarama-Muhanga and so on for almost twenty cities.

Apparently, the change has not borne the desired fruit since, besides the official documents, everyone still calls the cities by their original name.

Collective Memory

Before everyone, as often happened in history, the Greeks had already personified memory, *Mnemosyne*, through new Muse calliope (history) Clio (history) Melpomene (Tragedy), and Polyhymnia (Hymnes)²⁶⁰.

In the process of forming a state following mass violence and atrocities, particular attention is paid to collective memory. The events that took place after the violence are also part of memory, such as transitional justice, which "has profoundly to do with the ethics of memory"²⁶¹. In Rwanda, South Africa, Latin America, transitional justice was the first moment in which the victims and their perpetrators met and were able to talk to each other.

The first thinker who dealt with collective memory was Maurice Halbwachs, a student of Durkheim, who in 1925 explained the difference between individual memory and a group of individuals remembering the same events. The key text of Maurice Halbwachs' study is "The Collective Memory"²⁶², a masterpiece that was understood, for situations that occurred, only many decades later. Halbwachs was the first who, in his studies, decided to show memory as a collective entity in the form of a group or society. In Europe, especially since humanism, the writing of memory has been entrusted to the elite, to those who had the economic possibility to print and keep their memories on paper. The memory of the elite, therefore, has become collective memory.

Similarly, Halbwachs theorized the importance of analyzing as many memories as many social groups that formed a given community, since memory is by nature a social construct and therefore it has characteristics of multiplicity and plurality²⁶³. These memories, then, elaborated, would form the collective memory that would be preserved. Halbwachs also makes a clear distinction between collective memory and historical memory. History, especially the one studied in schools, is essentially the history of a nation with its festivals, dates, people, names. One of the problems that is created, however, is that students and often those who teach have not witnessed history in first person and therefore what they are teaching is not questionable by them and is often the result of institutional

²⁶⁰ Belavusau, U., Gliszczyńska-Grabias, A., *Memory Laws: Mapping a New Subject in Comparative Law and Transitional Justice* in ASSER research paper 2017-03, Asser Institute, 2017

²⁶¹ Margalit, A., *The ethics of memory*, Cambridge – London, Harvard University Press

²⁶² Halbwachs, M., *On collective memory*, The heritage of sociology, 1992

²⁶³ *Ibid*

programs established by a higher body, often the government. In this regard, it often happens that governments, knowing the importance of education in the formation of the people, adapt school curricula to their liking. According to Halwachs²⁶⁴, the past in its memory sense is nothing other than what society is able to reconstruct (events, previous situations) in its present time frame of reference. In the present, however, the games of force in a society and the level of expression of individuals often make the difference. In a post-genocide society, the memory of the most educated and powerful prevails, i.e. those who are best able to expose memories and make them their own in the community, as the Rwanda RPF did. This situation has often repeated itself in the country. In colonial Rwanda, the history of *Europeanised Africa* was taught, while now an anti-Europeanist history is being taught, one that puts all the misfortunes of Africa under colonial domination.

In Africa, oral tradition has ensured that older generations pass on their life experiences to young people. Halwachs defines this process as 'transgenerational memory', that is to say a set of history and memories of life and various things and it remains similar from individual to individual. For example, a young Rwandan could learn three different stories about the genocide, depending on whether an old man tells them, whether he learns them at school or in a foreign country.

A particularly well-known example of how history and memory differ and intertwine can be the gospels. Both the four inserted in the Bible and all the apocryphal ones narrate the events of Jesus' life, but all of them do so in different ways and according to their point of view, including the synoptics which, although they narrate the events with the same temporal order, differ from each other in the narration. This is a clear example of how memory can differ within similar contexts.

To make memory physical and tangible, modern societies have built and established *lieux de memoire*, a term coined by Pierre Nora²⁶⁵. Developing Halwachs' theories, Nora compares history and memory. History, in fact, has a well-defined place in time and separates the ages while memory crosses them and brings the past back into the present. History is universal while memory is singular²⁶⁶. According to Nora, memory and history meet in the *lieux de memoire*, monuments, symbols, archives, manuals, commemorations, cemeteries. In addition, memory and *lieux de memoire* to remain effective must be able to adapt over time to changes in society in order to better fulfil their role. In recent years there has been a proliferation of commemorations and new 'memory laws' in many countries of the world²⁶⁷.

²⁶⁴ Halwachs, M., *On collective memory*, The heritage of sociology, 1992

²⁶⁵ Nora P., *Les lieux et la memoire*, Paris, Gallimard, 1984

²⁶⁶ Ibid.

²⁶⁷ Belavusau, U., Gliszczyńska-Grabias, A., *Memory Laws: Mapping a New Subject in Comparative Law and Transitional Justice* in ASSER research paper 2017-03, Asser Institute, 2017

To counter the phenomenon of rewriting history and denialism of historical facts, Belavusau suggests reviewing the arguments of memory laws from a comparative law and transitional justice point of view²⁶⁸. In his recent publication Belavusau shows how the memory laws are constantly touching our everyday life in different and often controversial ways²⁶⁹. There exist laws that impose penalties for offensive conduct or speech against heroes recognized by the community, laws that instead openly condemn certain ideologies such as the *apologia* of fascism in Italy or the genocide law in Rwanda. In this punitive form, the memory laws impose limits on democratic freedom of expression, association and the media.

As we have already seen, the memory of children is shaped through textbooks approved by the state and designed not to impart simple knowledge but a subjective interpretation of history and therefore of memory. In addition to this, everywhere in the world governments establish national ceremonies and authorize the construction of public monuments in memory of heroes of the past.

It is useful to note that most laws of memory were written by political scientists, sociologists and historians instead of legal experts. The politics of remembrance is still political and drives the values and attitudes of a community²⁷⁰. While the analyses of political scientists or sociologists address global phenomena, the studies carried out by legal experts analyze limited geographical contexts²⁷¹.

Analyzing the role of memory, Margalit asks himself: "are we obliged to remember events and people from the past? And if we are, what is the nature of this obligation? Who are the "we" who may be obligated to remember: the collective "we", or some distributive sense of "we" that puts the obligation to remember on each and every member of the collective?"²⁷². The Rwandan case remains unique, since in a very short time, less than two months, the executioners and victims found themselves living again in the same villages, attending the same markets and cultivating the same fields. What marked the sharp division between those who had killed and those who had suffered were, only after many years, the *Gacaca* courts. First the *Gacaca* gave the ordinary people the opportunity to speak and remember. They gave the possibility through interweaving memories to find more executioners, but above all to increase the feeling of common pain. Being able to speak and make their story known to the whole community, allowed the victims to get rid of some of the pain and share it with their village. From that moment on, the individual story became everyone's story

²⁶⁸ Belavusau, U., Gliszczyńska-Grabias, A., *Law and Memory: Towards legal governance of history*, Cambridge University Press, New York, 2017

²⁶⁹ Belavusau, U., Gliszczyńska-Grabias, A., *Memory Laws: Mapping a New Subject in Comparative Law and Transitional Justice* in ASSER research paper 2017-03, Asser Institute, 2017

²⁷⁰ Löytömäki, S., *Law and the Politics of Memory: Confronting the Past*, Oxon and New York, Routledge, 2014

²⁷¹ Hennebel, L., Hochman, T., *Genocide Denial and the Law*, Oxford University Press, 2011.

²⁷² Margalit, A., *The ethics of memory*, Cambridge – London, Harvard University Press, 2000

and the memory from individual to collective²⁷³. In Rwanda and Africa more generally, the community is even more important than the individual, especially in rural communities. It is said, for example, that in the village, children are brought up together by all the members of the village and so the pain of one becomes the pain of all. Margalit so, asks: "Are there things that we ought to remember? has its parallel, are there things that we ought to forget? Should we, for example, forget for the sake of "forgiving"?".

In the Rwandan case the choice of what we should remember and what we should forget was not made democratically for two reasons. The first concerns the average knowledge and culture of the population, which is very low, while, for example, the culture of the Jews allowed the people of Israel to remember everything or almost everything about the horrors they suffered. The second concerns the government elite who came to power after the genocide. The RPF government has promoted its truth, memory and history. The revenge massacres carried out by the RPF army in the two years after 1994 disappeared into thin air and it was only in 2017 that the positive role of a part of Hutu who opposed the massacres with their lives was publicly acknowledged. In this regard, the Memorial Day, established on April 7, until 2017 only remembered the fallen Tutsis, although it is estimated that at least 10% of the dead were Hutus who opposed the genocide. The day of April 7 is known as *Kwibuka*, which in Kinyarwanda means 'to remember'. Although the government pushed for the formation of a single people and more or less legally banned the racial division from the outset, the lack of willingness of a government not to remember the Hutu stands out. And it is here that memory is then placed on the same level as history and is also written by the victors.

Since the end of the genocide, the Rwandan government and the institutions have carried out an official narrative of the events. This "official memory" has created collective memory and public discourse, limiting or almost eliminating the debate about the past. Nowadays, public memory in the country is controlled and directed from above in ceremonies, education and on the media. The role assumed by memory in government discourse is of primary importance and modulates the social fabric. The government therefore controls collective memory, limiting, as we have seen in the previous chapter, the debate on ethnicity and on the events that took place up to 1994. It can therefore be said that there is no freedom of speech on these issues, on how memory is carried on, on memory education in schools and on all the events that take place in April.

Memory is fundamental in making societies that come out of conflict understand their own identity and helps them to heal and move forward at the same time.

What is memory? And what does it represent in post-conflict societies? Memory is a label for a different set of cognitive capacities with which human being retain information about and

²⁷³ From a personal interview with Prof. Isaie Nzeimana at his house in Butare, July 16, 2019

reconstruct the past in (and for) the present. It is related but distinct to perception, imagination, or knowledge, as well as significantly connected to emotion, trauma, reasoning and morality²⁷⁴. Memory also plays an important part in the constitution of individual as well as collective identities by sharing, constructing, and transmitting memories within a society or group²⁷⁵.

As a result of tragic events, people remember, and this memory makes it possible to reconstruct history. The narrative helps to increase the details and fix the memory in a precise moment in time. Creating a narrative (especially a common and shared narrative) is a fundamental step towards healing, which in turn is the first step towards reconciliation. Unfortunately, over time, broad and important bases have been created to allow the creation of a shared memory, but it has never been carefully analyzed in which environment it is best to narrate these memories. In Rwanda, it made no difference whether the memory was expressed in front of the *Gacaca*, the ICTR, a church or a commemoration event. In post-genocide memory environments were often decided by politics and strong powers. Whose memory is it right to remember? Who should be silenced? Which should be made public? In order to answer these questions, we fall back to the theme of truth, which is universal, official, and public. Yasmin Naqvi writes in this regard that: "Truth is a concept that is notoriously hard to pin down. It implies objective credibility but also requires subjective understanding. It suggests agreement about factual reality but also space for differing interpretations. It takes on value in the public sphere while remaining an intensely private matter for the individual, and it is honed on the past but may change our perception of the present and teach lessons about what to do with the future"²⁷⁶. As we have already seen, truth is at the basis of transitional justice and also in Rwanda truth has been the pivotal point of the *Gacaca*. Memory and truth often overlap in post-conflict societies, but they must be understood as extremely different. Memory is not always true, and truth does not always lead to situations where it is safe to make one's memory known. According to the International center for Transitional Justice (ICTJ) "truth and memory are not just a matter of state policy. They are also the responsibilities of any society striving for security, equality, and peace". In Rwanda, in this sense, an attempt has been made to cover a part of the truth, in order to make only the official one stands out and thus create a unique and official memory. The public means to know the truth and eventually distance oneself from the official one. Phil Clark says that the *Gacaca* helped to find 3 truths: legal, therapeutic/emotional, restorative. These truths helped to rebuild the social fabric also because participation in the *Gacaca* was generally very high. When the *Gacaca* were

²⁷⁴ Conway, C., The role of memory in post-genocide Rwanda, 2013. Available at <https://www.peaceinsight.org/blog/2013/08/the-role-of-memory-in-post-genocide-rwanda/> (accessed 14/04/2020)

²⁷⁵ Ibid

²⁷⁶ Naqvi, Y., *The right to the truth in international law: fact or fiction?*, IRRC n.862, 2006. Available at <https://international-review.icrc.org/articles/right-truth-international-law-fact-or-fiction> (Accessed 14/04/2020)

officially closed in 2012, Clark tried to give a judgement saying that, although the memory was carried on during the hearings and many people were able to tell, it is not certain that a real truth was discovered in parallel, as many still remain afraid and try to adhere as much as possible to the truth of the government.

The moral witness

In chapter five of his book Margalit analyses the role of the moral witness. Starting from the assumption that the collective memory needs agents and agencies to preserve itself, Margalit states that a particular type of agent is the moral witness²⁷⁷. Leaving aside the distinction between ethics and morality, who is the moral witness by phenomenological description? Usually he is a survivor, able to witness the catastrophic events. Noah in the Bible has overcome natural disasters and suffered pain that was not caused by an evil force. Is he therefore a moral witness? According to Margalit he is not, but according to some theologians he is, because Noah witnessed the sins of man that unleashed the wrath of God.

Margalit asks: a lady who looked out her window in Istanbul, saw the terrible abuses against the Armenians, is she a moral witness, even though she did not take part in the events? Is General Dallaire, who during the genocide in Rwanda had to watch helplessly (by higher orders) the extermination of the Tutsis, a moral witness? According to Margalit, yes, but both do not play a central role in the analysis because the paradigmatic case of the moral witness is the one who experienced the suffering first-hand. Moreover, the suffering must be caused by a malignant agent. One who witnesses the violence and does not take part in it even though he can, like a Nazi German during the war, how should he be considered? He is an amoral witness, therefore not immoral, but neither moral.

Should the moral witness be guided by hope? Hope is what makes the witness believe that sooner or later universal justice will triumph on earth. In the New Testament there is the "God of hope" who guides the Christian martyrs, who in this situation are moral witnesses. In Rwanda, some priests, following the God of hope, have worked as moral witnesses. Many were not spared, but others were allowed to tell the story.

Margalit therefore asks a further question. Can a traitor be a moral witness? How immoral can one be to become a moral witness? The French with their Operation Turquoise invaded southern Rwanda with the declared intention of ending the violence and witnessed it. They saw and dealt with thousands of refugees. However, their mission was to rescue the genocidaires, whom they had

²⁷⁷ Margalit, A., *The ethics of memory*, Cambridge – London, Harvard University Press, 2000.

previously trained and armed themselves. So, can the French army be a moral witness? No, because paradigmically, a moral witness is someone whose morality is not in question and if he is forced to question it, he can only do so for his own survival.

Primo Levi shows us how the most solid material to discover the truth of the facts are the memories of the survivors. In the case of the Jews, the most useful testimonies are those who were chosen to live as servants of the Nazis because they possessed some special technical skills and therefore, living in contact with them, they knew more about life behind the scenes in the concentration camps. In Rwanda this condition never occurred in the three months, unfortunately, and the testimonies were entrusted to 'common' survivors. General Dallaire is the one who came closest to the genocide victims because, representing the United Nations, he witnessed the massacres helplessly throughout the three months. Dallaire fulfilled his role as moral witness by writing the book 'Shaking the hands with the devil'²⁷⁸ in which he recounts all the events he witnessed. But finally, is the moral witness also ethical? Given the analysis we can say yes. In this case there is, according to Margalit, a systematic ambiguity between ethics and morality.

Forgiveness in religion

Is it possible to forgive and forget? What is the relationship between forgiveness and forgetting? Forgiveness is at the basis of Christian philosophy and teachings, which in turn are only the foundations of Rwandan society. It is said that those who have faith are better able to overcome trauma because they are guided by a higher force. The problem is that in Rwanda many atrocities were committed precisely by priests and nuns and therefore it was more difficult to forget and forgive. Religions have always expressed different opinions and doctrines in this regard and have directed the beliefs of their faithful towards different practices.

In the Old Testament there is the word '*salakh*', forgiveness, understood only as the forgiveness of God. It is not used for people, so instead the word '*nasa*'²⁷⁹, which means to endure, is used. The one who forgives, in fact, bears the burden of sin with the sinner. Christianity brings an epochal revolution to this doctrine, because it speaks of a God who forgives his faithful and sacrifices his son to forgive the sins of others. Forgiveness therefore becomes a fundamental character of the Christian doctrine. In other religions, such as Buddhism for example, 'compassion' is halfway between Christian forgiveness and Jewish tolerance. Religion has brought to the Western world the figure of the scapegoat, that is, the one who takes on the sins of all, and although he is sometimes not

²⁷⁸ Dallaire, R., *Shaking hands with the devil*, Random House Canada, Montreal, 2003

²⁷⁹ Margalit, A., *The ethics of memory*, Cambridge – London, Harvard University Press

a negative figure, he is never interpreted as a positive figure. Religions have been in history bearers of symbols and doctrines that have often influenced cultures.

Christianity has developed the practice of forgiveness and reconciliation since its beginnings. Already in the primitive church (3rd century AD), the baptized person who voluntarily and freely confessed his guilt (*exomolôghēsis*) before the community was integrated into it²⁸⁰. There followed a period of penitence, atonement, mortification and prayer, to which the community was united. Finally, forgiveness and reconciliation took over through the intervention of the bishop.²⁸¹ Forgiveness, the remission of sins, the abolition of economic debt is often addressed in the Bible and modern Catholicism has often tried to emulate what was written in its holy book. In the Jubilee of 2000 Pope John Paul II together with singer Bono Vox carried out a long media and political campaign at the end of which creditor countries abolished the debt of African debtor countries for a total of \$100 billion. But is forgiveness an attitude or a duty for a Christian? Especially during the *Gacaca* period in Rwanda, the Catholic Church tried to be as close as possible to those who had the arduous task of forgiveness. In fact, forgiveness should not be imposed but should be a conscious decision to overcome the sense of anger and revenge. During the *Gacaca*, therefore, the victim played a double role. On the one hand he had to accuse the accused for the crimes suffered and on the other hand after receiving the request for forgiveness and the admission of guilt, he had to try to forgive. But although asking for forgiveness is an intentional act, forgiveness is not. Saying 'I forgive you' is not a real act but a promise. In a survey I have carried out over the past few months among those who have participated in the *Gacaca*, 17% indicated forgiveness as the goal most achieved by the courts, second only to reconciliation, in which forgiveness plays a key role.

From Halbwach's theories to the present day, memory has played an important role in the reconstruction of post-genocide societies. After the Holocaust, the Jewish state founded its roots in the memory of what had happened by establishing places, days of memory and carrying on the memory of events through its authors, philosophers and storytellers. The cultural component plays a fundamental role in the process of memory. People with a higher level of education have been able to see their injustices recognized and to carry on the memory of the victims. In Rwanda, memory has been carried on by the war winning RPF government and its Tutsi president, Paul Kagame. While insisting on the unification of his people, he tried to impose a Tutsi-centric memory by completely eliminating the revenge massacres carried out by his army between 1994 and 1996. Although an

²⁸⁰ Tertullian explains that the *exomolôghēsis* is the discipline that "prescribes man to humble himself and to prostrate himself, imposing a regime of life that attracts compassion".

²⁸¹ de Palma, L.M., *Penitenza e perdono nella chiesa antica e medievale*, in *Riconciliazione sacramentale*, Edizioni Messaggero, Padova, 2019

almost official memory exists in the country, a collective and shared memory has developed in the individual communities, the result of the years of work of the *Gacaca* courts.

The importance of the ethics of memory has been theorized by Margalit, who adds the religious component to the moral one. Nora, for his part, elaborates Halbwachs' theories and is the first to theorize the importance of the lieux de memoire, which are fundamental for the purposes of memory. Finally, Margalit tackles the theme of the moral witness, the one who took part directly in the atrocities and is therefore able to tell the story in the first person.

~ CONCLUSION ~

How did a country, that was almost totally destroyed in 1994, manage to be nicknamed the 'Singapore of Africa' only 25 years after? How is it possible that two ethnic groups that have hated and slaughtered each other for eighty years have come to peace in just a few months? Rwandan development has surpassed, almost doubled, that of the other African states. The progression has not only been manifested in a prodigious increase in GDP, but also in a clear improvement in social life, rights, a reduction of the hunger, infant mortality and extreme poverty. Rwanda in 2020 is a safe country where women can go home alone at night, where the police can be totally trusted, where corruption is almost non-existent, where in January 2020 the first smartphone entirely designed, produced and assembled in Africa was launched. But how was this possible?

Within this work I have examined only a part of the process which is the path of justice that has brought Rwanda from the ruins of July 1994 until today. All the above developments have been accompanied step by step by a process of reconciliation and reconstruction of the social fabric strongly endorsed by the government. In the text I therefore tried to answer to the macro-question: "Is the process of reconciliation in Rwanda concluded? And if so, with what achievements?"

To answer these questions, I showed what were the historical events that led to the genocide, what were the causes of ethnic division, what were the responsibilities of colonization and the international community. In the common imagination, the Rwandan genocide took place for reasons of ethnic intolerance. If this may be the motivation that drove ordinary people to kill, it was certainly not the reason that moved the masterminds organizing the genocide. In fact, the Hutu elite had been submerged for years by economic, political and social problems and in order not to lose control of the country, they directed the anger of the people towards the Tutsi minority. From my field investigation and the studies carried out I was able to find that the racial element is completely marginal and insufficient to explain the conflicts.

Then I looked at the process of transitional justice carried out in the country in the aftermath of the genocide. Despite all these difficulties, the government was able to bring to justice a large number of those responsible for the genocide, around 120,000.

While in Arusha the United Nations tried the seventy masterminds who had organized the slaughters, in Rwanda the government led by Kagame was trying to find a homegrown solution. Ordinary justice would take too long and so it was decided to dust off the *Gacaca* courts, an ancient Rwandan instrument used to settle property disputes within the village. Although the *Gacaca* had a lack of experience, since the judges were often not law graduates, overall it can be said that their effect was positive, and their goal achieved. The *Gacaca* are comparable to the South African TRC

but numerically they have analyzed many more cases, in fact, still today they represent the most massive experiment of transitional justice in the history of mankind.

The figure of Kagame represents the face of this country. A leader, tough, uncompromising, seemingly incorruptible and who never works to improve the present but always focuses his vision on the long term. The country follows and trusts him and even if the numbers with which he wins the elections are not reliable, it can be said that at least 75% of the people see him as the only leader still able to lead the nation today. On the other hand, Rwanda before Kagame had experienced colonization, dictatorship, massacres and genocide. Since his arrival the country has embarked on a run that even today does not seem willing to stop. Although accused of 'illiberal peacebuilding', the Kagame government boasts so many admirers throughout the continent that he was entrusted with the leadership of the African Union in 2019.

At the end, the focus of the study shifts to the political philosophy that drove the country in the transitional process. Memory has played a crucial role in Rwanda from the beginning. Ceremonies, memorials, commemorations, were from the very beginning the focus of attention also because the leadership was in the hands of those belonging to the same ethnic group as those who had been killed in the genocide, the Tutsis. The memory was also (involuntarily) carried on through the hearings in the *Gacaca* where people found the strength to tell and to listen. Reconstruction and reconciliation policies, such as the importance attached to memory and forgiveness, have been essential cornerstones and should be exported as models for resolving problems in other similar situations. Surely, two of the main reasons for Rwanda's success, in addition to important foreign aid, have been the fight against corruption and bringing together a divided people.

The reasons that motivated me to investigate the subject in greater depth were mainly two. The first was to understand why Rwanda is the only post-genocide country that has not split and created two different states as before and after was done by Israel, Bosnia-Serbia, Turkey-Armenia, North-South Sudan. The second was to assess whether reconciliation in the country, after 25 years of targeted policies, had finally been achieved. For the first question, I do not think I have found a final answer. In fact, I believe that one of the reasons why Rwanda did not split up after 1994 was that the majority of the population was Hutu while the Tutsis were in power and therefore none of them had a strong motivation for a diaspora. But the keystone of unity were the policies of popular unity proposed by Kagame and above all the progressive improvement in living conditions. In post-1994 Rwanda the people did not care who was in government, but rather that this government provided enough food and did not cause further conflict. Kagame and his staff made the two possible and in parallel with the policies of reconciliation and development they brought the country together.

As far as reconciliation is concerned, my analysis is based on previous studies by Clark and Sullo. They both personally witnessed the *Gacaca* for long periods and drew conclusions in the margins of their studies. My point of view is closer to that of Clark, and so positive, in judging the effects of transition policies. Analyzing the results of surveys and interviews carried out among the population at all levels (academics, students, farmers, clergy, illiterates) one can say that in most cases the ethnic division has been overcome. Young Rwandans have little interest in the past and often do not understand its significance. Those who suffered the genocide have apparently little resentment. However, the analysis is not yet definitive and complete. It should be carried out again in ten years' time when the percentage of those born after 1994 will equal those born before. As Prof. Wheeler suggests, much will depend on who will succeed Kagame and how the country will behave economically. If everyone comes out of extreme poverty, as expected in fifteen years, there will be no reason to go dusting off old rubbish. The slaughter did not happen, as we have seen, for ethnic reasons, but for political and economic ones. Rwanda, however, even trying to remain untouched, suffers and will suffer the political developments of its neighbors, especially DRC and Burundi where there is still a persistent racial hatred between Hutus and Tutsis.

The results of this study mark continuity with the research previously carried out by Clark, Waldorf and Sullo. An attempt was made to have a uniform and non-European-centric point of view in the analysis of the facts. The tendency of some studies is to analyze African situations with European standards and, of course, the results in terms of human rights, development, education, health are not always satisfying, indeed they are often quite poor. This work has tried to understand a phenomenon by analyzing it from its original context. The results can only be positive. The problems facing Rwandans today are completely different from those of 25 years ago. Those who responded to the survey pointed out that unemployment is the main problem, in a country that will increase from 12 to 40 million inhabitants in the next twenty years.

This study analyses research that lasted about fourteen months, two of which were spent in Rwanda. In future, longer and more in-depth research may be carried out over a longer period in order to achieve even more reliable results. Replicating the research in five to ten years could show how the perception of the ethnic problem has evolved over time. It would be very interesting to be able to replicate the study when the country will have a new president and understand whether racial peace and popular unity were real or simply imposed from above.

One of the implicit and unintended purposes of this study was to make the Italian academic world aware of a subject that was not very discussed, but which could be very interesting for comparative analysis with events that took place in Europe. The Rwandan genocide is sometimes analyzed within international law studies that examine the court of Arusha, in which, however, only

the accused were Rwandans. This work seeks answers in the everyday life of the Rwandan people and analyzes the indigenous transitional process. The dynamics of racism and ethnic division that were created in Rwanda before the genocide are the same that we witnessed in Europe, first during Nazism and then with Milosevic's Serbia. The Rwandan response was very different from the other two, and while the state of Israel was created outside Europe and there are still great tensions between Serbs and Bosnians today, the Rwandan response seems to have been the one that best managed to make peace with an extremely compromised situation. So why not study it?

African wars have often been snubbed by Westerners and labelled as tribal conflicts. If, instead, we really began to study the causes and consequences of such conflicts, it would be easier to understand the everyday life, even in Europe, where one of the hot topics on the agenda is the migration from the Africa. Moreover, deeper analyses would make it possible to understand the dynamics and peculiarities of a continent that in the next few years will become a major player in the geopolitical and economic world games.

APPENDIX

LAW N°18/2008 OF 23/07/2008 RELATING TO THE PUNISHMENT OF THE CRIME OF GENOCIDE IDEOLOGY

Chapter 1. GENERAL PROVISIONS

Article: 1 Purpose of this law

This Law aims at preventing and punishing the crime of genocide ideology.

Article: 2 Definition of “genocide ideology”

The genocide ideology is an aggregate of thoughts characterized by conduct, speeches, documents and other acts aiming at exterminating or inciting others to exterminate people basing on ethnic group, origin, nationality, region, color, physical appearance, sex, language, religion or political opinion, committed in normal periods or during war.

Article: 3 Characteristics of the crime of genocide ideology

The crime of genocide ideology is characterized in any behaviour manifested by facts aimed at dehumanizing a person or a group of persons with the same characteristics in the following manner:

1° threatening, intimidating, degrading through defamatory speeches, documents or actions which aim at propounding wickedness or inciting hatred;

2° marginalising, laughing at one’s misfortune, defaming, mocking, boasting, despising, degrading creating confusion aiming at negating the genocide which occurred, stirring up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred;

3° killing, planning to kill or attempting to kill someone for purposes of

furthering genocide ideology.

Chapter 2. PENALTIES

Article: 4 Sentencing the crime of genocide ideology

Any person convicted of the crime of genocide ideology as mentioned in Articles 2 and 3 of this Law shall be sentenced to an imprisonment of ten (10) years to twenty five (25) years and a fine of two hundred thousand (200.000) to one million (1.000.000) Rwandan francs.

In case of recidivism, the penalty provided for in the preceding paragraph shall be doubled.

Article: 5 Penalty awarded to a genocide ideology convict found guilty of the crime of genocide

Any person found guilty of the ideology of genocide who was convicted of the crime of genocide, shall be sentenced to life imprisonment.

Article: 6 Penalties awarded to current and former leaders

In case the perpetrator of the crime of genocide ideology is a leader in public administrative organs, political organisation, private administrative organs, or a non governmental organs, a religious leader, or a former leader in such organs, he/she shall be sentenced to an imprisonment of fifteen (15) years to twenty five (25) years and a fine of two million (2.000.000) to five million (5.000.000) Rwandan francs.

Article: 7 Penalties awarded to associations, a political organization and non profit making organization

Any association, political organization or non profit making organisation convicted of the crime of the ideology of genocide shall be subject to a punishment of its dissolution in accordance with legal provisions relating to dissolution of associations, political

organisations and non profit making associations and a fine of five million (5.000.000) to ten million (10.000.000) Rwandan francs without prejudice to individual liability of any participant in the commission of the crime.

Article: 8 Penalties for disseminating genocide ideology

Any person who disseminates genocide ideology in public through documents, speeches, pictures, media or any other means shall be sentenced to an imprisonment from twenty (20) years to twenty-five (25) years and a fine of two million (2. 000. 000) to five million (5.000.000) Rwandan francs.

Article: 9 Penalties awarded to children guilty of the crime of genocide ideology

In case a child under twelve years (12) of age is found guilty of a crime of genocide ideology, he or she shall be taken to a rehabilitation centre for a period not exceeding twelve (12) months.

In case a child who is found guilty of the crime of genocide ideology is between twelve (12) and eighteen (18) years, he or she shall be sentenced to a half of the penalty referred to in Article 4 of this Law, without prejudice to the possibility that a part or whole of the sentence may be served in the rehabilitation centre.

Article: 10 Follow up of a child who is in or was in a rehabilitation centre

An Order of the Minister in charge of rehabilitation centres shall determine procedures through which children referred to in Article 9 of this Law are followed up while in rehabilitation centres and during their social reintegration.

Article: 11 Penalties awarded to parents and to other guardians of the child

In case it is evident that the parent of the child referred to in Article 9 of this Law, the guardian, the tutor, the teacher or the school headmaster of the child participated in inculcating the genocide ideology, they shall be sentenced to an imprisonment of fifteen (15) years to twenty five (25) years.

A teacher or a director referred to in the preceding paragraph cannot be reintegrated into

his teaching career.

Article: 12 Penalty awarded to a murderer, a conspirator or attempted murderer

Without prejudice to the provisions of Article 4 of this Law, any person who kills another, one who conspires or who attempts to kill basing on the ideology of genocide shall be sentenced to a life imprisonment.

There shall be no mitigating circumstance regarding this crime.

Article: 13 Penalties against false accusers

Any person found guilty of false accusations of the crime of genocide ideology referred to in Article 4 of this Law shall be liable to the punishment provided for by the penal Code.

Article: 14 Damages

Damages awarded to victims of the crime of the ideology of genocide shall be determined in accordance with provisions of civil procedure.

Chapter 3. FINAL PROVISIONS

Article: 15 Abrogating provisions

All prior legal provisions contrary to this Law are hereby repealed.

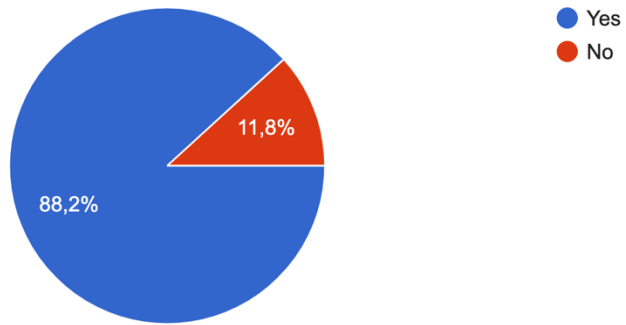
Article: 16 Commencement

This Law shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda.

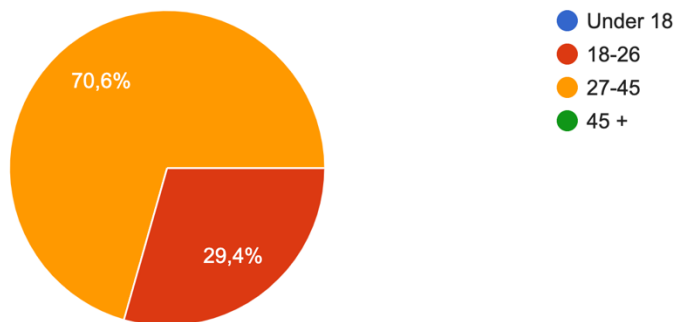
Kigali, on 23/07/2008

SURVEY

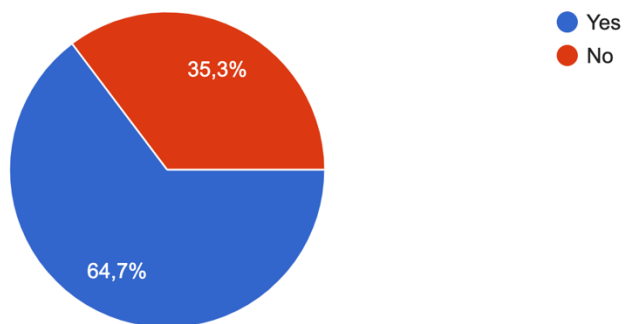
Do you live in Rwanda ?



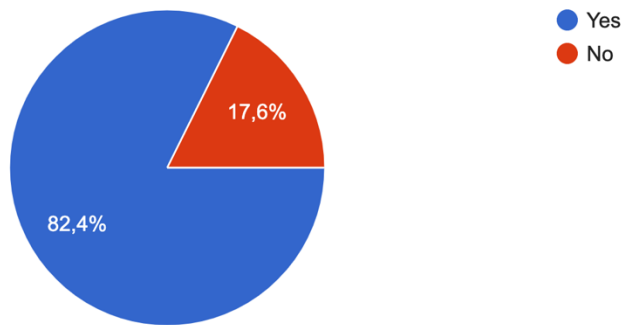
How old are you ?



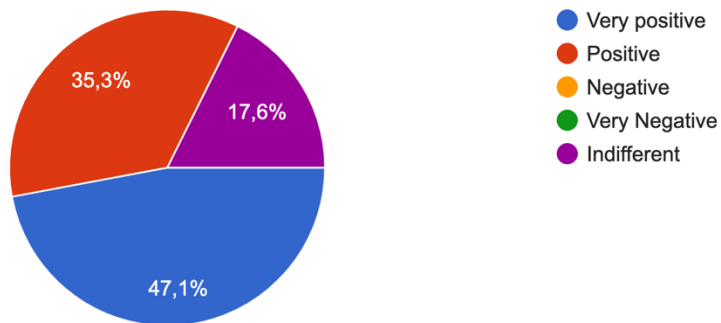
You lived in Rwanda during the genocide?



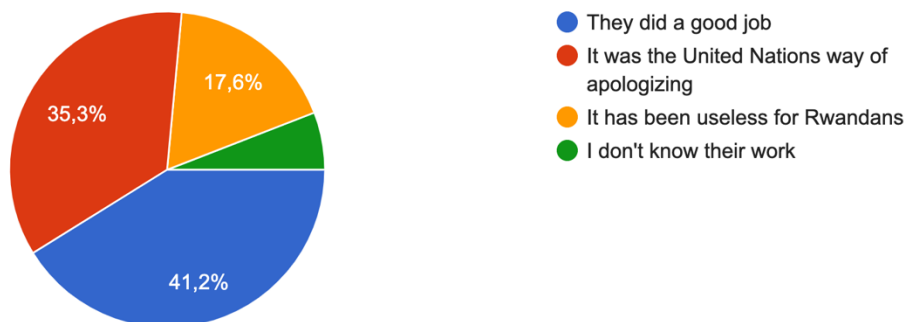
Did you lost any relative during the genocide?



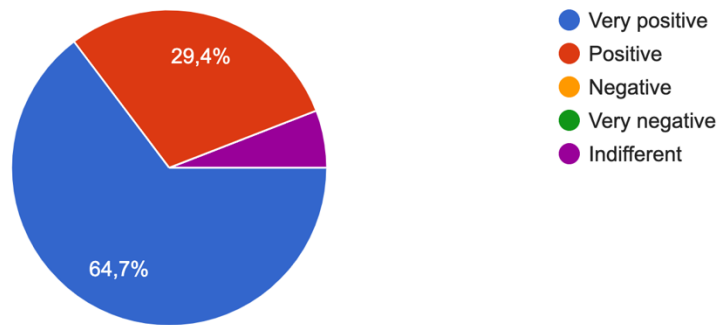
Your opinion about the Gacaca courts is:



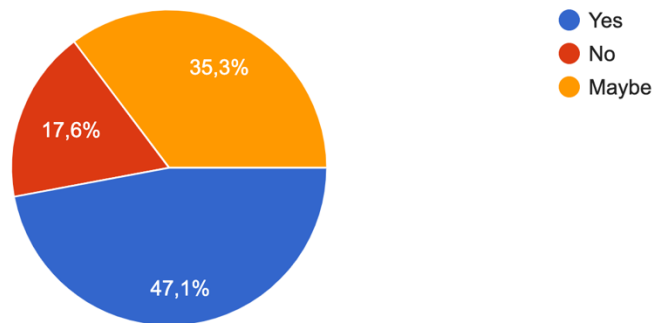
Your opinion about ICTR of Arusha is:



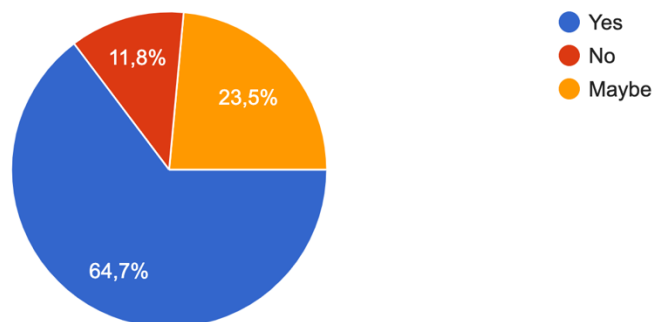
Your opinion about the reconciliation policies implemented by the government since the 2000?



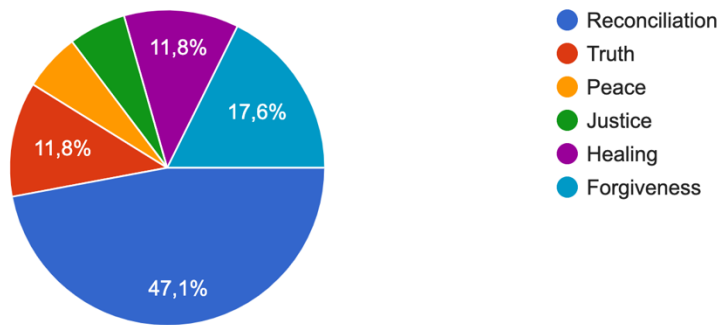
After 25 years, you think the pre-genocide divisions are over?



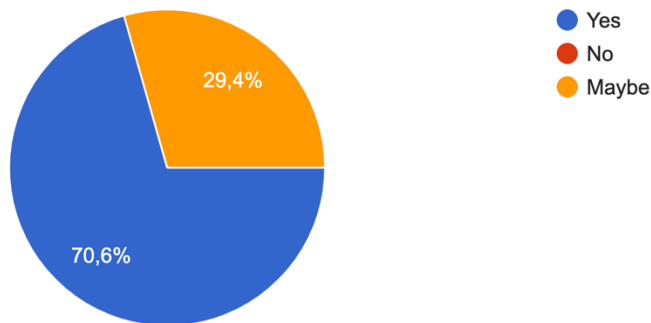
Do you think Gacaca was a fair tribunal?



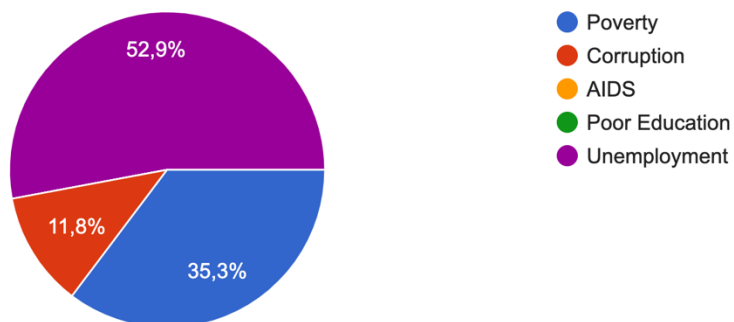
What do you think Gacaca has achieved the most?



Do you think we can finally talk about one Rwandan people?



What do you think is the biggest problem in the country today?



GLOSSARY

Abunzi: mediation committees.

Chaka-mchaka: a form of indoctrination camp used during the Ugandan bush war for military cadres.

Gacaca: literally, grass or lawn; name also given to community-level dispute resolution mechanism and court system designed to prosecute genocide cases (pronounced ga-CHA-cha)

Gacaca nkiristu: Christian *gacaca*; a dispute resolution mechanism used in some Rwandan churches

Ibuka: literally, ‘to remember’; name of the largest organization of Rwandan genocide survivors

Ingando: literally, an encampment or assembly area; a Rwandan military space used for briefing troops; more recently, a civic education camp

Interahamwe: ‘those who work together’; name given to genocidal militias

Inyangamugayo: literally, a person of integrity; a *gacaca* judge

Uburere buruta ubuvuke: Rwandan proverb, ‘people are not born with values’

Urumuri: literally, ‘the light’; name given to judges during prison *gacaca*

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- Florence Uwayezu, Genocide Survivor, Cyieza Mission, 5 July 2019.
- Fidele Dushimimana, Deputy Vice-Chancellor for Academics, Institut Catholique de Kabgayi, Gitarama, 6 July 2019.
- Charles Nyonteze, Principal St. Mathieu High School, Busasamana, 10 July 2019.
- Prof. Isaie Nzeimana, Department of Philosophy, University of Rwanda, Huye, 16-17 July 2019.
- Prof. Simeon Wheeler, Department of Political Science, University of Rwanda, Huye, 17 July 2019.
- Antoine Mugesera, Former Senator and Historian, Kigali, 20 July 2019.
- Fraçoise Kankindi, Bene Rwanda Onlus, Roma, 25 February 2020
- Don Francesco Tedeschi, Comunità di Sant'Egidio, Rome, 28 February 2020.
- Prof. Ilaria Buscaglia, College of Education, University of Rwanda, 25 April 2020

I carried out other interviews with a former Minister, three clergymen and five survivors in Kigali, Gisenyi, Huye and Ngororero. I have been asked to keep their anonymity.

Department of Political Science

Chair of Comparative Public Law

**Constitutional rebuilding after the genocide:
reconciliation and memory in modern Rwanda**

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ACADEMIC YEAR 2019/2020

~ SUMMARY ~

How did a country, that was almost totally destroyed in 1994, manage to be nicknamed the 'Singapore of Africa' only 25 years after? How is it possible that two ethnic groups that have hated and slaughtered each other for eighty years have come to peace in just a few months? The progression has not only been manifested in a prodigious increase in GDP, but also in a clear improvement in social life, rights, a reduction of the hunger, infant mortality and extreme poverty. Rwanda in 2020 is a safe country where women can go home alone at night, where the police can be totally trusted, where corruption is almost non-existent, where in January 2020 the first smartphone entirely designed, produced and assembled in Africa was launched. But how was this possible?

All the above developments have been accompanied step by step by a process of reconciliation and reconstruction of the social fabric strongly endorsed by the government. In my study I tried to respond to the macro-question: "Is the process of reconciliation in Rwanda concluded? And if so, with what achievements?"

The Rwandan genocide that took place between April and July 1994 was often portrayed by the media and public opinion as an ethnic and tribal war that had little to do with Western society and civilization and was therefore not only unworthy of media relevance, but also incomprehensible. When someone defines a conflict, especially if it is African, as "tribal" he does so in order to give a shadow of unintelligibility to it. The genocide of Rwanda, like all the wars fought in Africa in the 20th century, had nothing tribal or ancestral about it, on the contrary it was expressly of a political, economic and post-colonial nature. Like all the genocides that occurred in the second half of the last century, although preventable, it was not stopped by the United Nations and the international community but only by a military intervention by an organized and independent army. The Rwandan genocide was similarly prepared by an elite who, faced with an economic and political crisis, selfishly tried to save themselves by blinding their people with hatred and throwing the Hutu majority against the Tutsi minority. The de-humanization of the rival has always been one of the tactics used by genocidaires. The Nazis called the Jews rats and the Hutus called the Tutsi cockroaches, comparing them to an animal by nature dirty, disease-carrying and slipping everywhere. De-humanization uses explicit strategies, which openly deny the humanity of the other, and subtle strategies, which unconsciously erode the participation of others in humanity. The present work, however, does not aim to recount the genocide and the tragic events that marked it in 1994. This study is intended to analyze the effects of the policies of reconstruction and reconciliation 25 years after the genocide. It is in continuity with the analysis previously made by

Phil Clark²⁸² dated 2010 and tries to find some answers to the questions he asked during the analysis.

Rwanda is a small landlocked African country whose pre-twentieth century history we know very little about. Originally this land was inhabited by the Twa²⁸³, an Aboriginal population that now represents only 1% of the total. Between the 8th and 10th centuries, a population of hunter-gatherers of Bantu origin, the Hutus, arrived from West Africa and still today represent the vast majority of the population²⁸⁴. In the 11th century came from Ethiopia the Tutsis, farmers but above all cattle breeders, who, although representing less than 15% of the population, managed over the centuries to gain power over the other two ethnic groups and to establish a monarchy that had control over the twelve tribes that formed the country. Rwanda was one of the last African states to be colonized by Europeans: the Germans, at the end of the 19th century, reached the country coming from Tanzania²⁸⁵. Their arrival, contrary to what happened later with the Belgians, did not particularly affect the lives of the Rwandans as they devoted themselves mainly to the study of the indigenous peoples and the territory. After the defeat in the First World War, the League of Nations handed Rwanda over to the Belgians, which adopted much more invasive policies than their predecessors. Even though they built schools, seminaries, hospitals, libraries, they entrusted the administration to the Tutsis and introduced in the country the identity cards that showed the ethnicity, marking a deep split in the population, which did not exist before their arrival. It should be remembered that although the ethnicity was inherited from the father, mixed marriages were common in Rwanda, the sense of belonging was more to one's own tribe than to one's own ethnicity and both Hutus and Tutsis were present in the tribes.

By giving power to the Tutsis, the Belgians allowed and supported racial discrimination against the Hutus who had no access to certain jobs and whose standard of living was much lower than that of the Tutsis. The Belgian protectorate lasted until the end of the 1950s, when decolonization reached the small African country whose leaders demanded and obtained independence, inspired by the teachings and ideals of Julius Nyerere in Tanzania. Naturally, with free and democratic elections, the party supported by the Hutu majority came to power. The first democratically elected president, Gregoire Kayibanda, immediately implemented repressive policies towards the Tutsi minority, promoting and perpetrating mass slaughter and persecution.

²⁸² Clark P., *The Gacaca courts, post-genocide justice, and reconciliation in Rwanda: Justice without lawyers*, Cambridge University Press, New York, 2010.

²⁸³ Mamdani M., *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*. Princeton University Press, Princeton, N.J., 2002.

²⁸⁴ Chrétien J.P., *The Great Lakes of Africa: Two Thousand Years of History*. MIT Press, Cambridge, Massachusetts, 2003.

²⁸⁵ Prunier G., *The Rwanda Crisis, 1959–1994: History of a Genocide* (2nd ed.). C. Hurst & Co. Publishers, London, 1995.

After thirteen years, the Kayibanda government was overthrown by an internal coup d'état and Juvenal Habyarimana came to power, which dissolved the political tensions created by his predecessor, but nevertheless maintained the monopartism and racial discrimination policies.

Rwanda of the 1970s and 1980s, however, remained one of the poorest countries in the world, where the population had difficulty in obtaining the daily subsistence.

Following an escalation of ethnic tensions, in 1990, an army formed by Tutsis who had fled to Uganda following the persecution of Kayibanda, led by a young general, Paul Kagame, invaded the country from the north and started a civil war. Logistically supported by the allied Museveni's Uganda, the RPF (Republican Patriotic Front) army managed to penetrate the country but was promptly rejected. Over the next three years the war continued and was only resolved following a peace treaty signed in 1993 in the city of Arusha, Tanzania. However, the peace did not last long. On April 6, 1994, the plane carrying President Habyarimana back to Kigali was shot down by a missile near the airport. Through the radios, the leaders of the Hutu party and the Interahamwe militia reported that Tutsi rebels had killed the president. In 45 minutes, barricades were raised in the streets and lists containing the names of Tutsi families were distributed by districts and cities. 580,000 machetes that had been imported from China in February of the same year were handed out. Within three days the massacres began.

General Romeo Dallaire, the head of UNAMIR, had warned the central office in New York a few days earlier that something was about to happen in Rwanda and had asked for the possibility of intervening in case of uprisings. Dallaire's fax²⁸⁶ received no response and the Blue Helmets had no choice but to protect themselves and watch.

In 100 days between 800,000 and 1,200,000 people died, mostly Tutsis but also many moderate Hutus who opposed and refused to carry out the genocide. After secretly supporting the Hutu government for years, the French army through the Operation Turquoise invaded the country from the south, officially to put an end to the massacres but with the precise aim of saving, confusing them among the refugees, the minds behind the genocide, many of whom are still living in France today. In parallel with the French invasion, Paul Kagame's army advanced from the north into the capital, Kigali. The RPF was the army that really stopped the genocide, ending it on July 7, 1994.

The situation in Rwanda in mid-1994 was more than disastrous: about 2 million refugees in neighboring countries, 1,000,000 IDPs, most of the men had been killed or murdered and therefore had to be found and tried. A cholera epidemic did the rest: the population managed to sustain itself

²⁸⁶ National Security Archive, *The Rwanda "Genocide Fax": What We Know Now*, 9 January 2014. Archived from the original on 19 December 2018.

in the following two years only thanks to international aid. The infrastructure was completely destroyed, there were no water supply, the fields that were once cultivated had been devastated and, above all, the population was totally in shock, half widows and orphans and half killers.

For the first six years, until 2000 therefore, a transitional government was established with Bizimungu as president, a Hutu, and Kagame, his vice who acted as a real president. While the Arusha ICTR was concerned with judging the seventy masterminds who had organized the genocide, there were more than 120,000 people in Rwandan prisons that ordinary justice, in its time, would never have been able to try.

At the end of the year 2000, consideration began to be given to the possibility of dusting off an ancient indigenous tool used in the villages to settle property disputes to make it a real tribunal in which wise men and elders chosen by the village would be the judges. As a result, the Gacaca courts were reassembled, which numbered 11,000, almost one per village²⁸⁷. The goal of the Gacacas was not to inflict a punishment on the accused found guilty, but to try to rehabilitate him so that he could return to live in his community. The Gacacas were the largest transitional justice experiment in history and it is remarkable that this happened in a sub-Saharan African country. If the accused was found guilty, if he had admitted his guilt, he would not have received life imprisonment but, depending on the crime committed, he would have served a first term in prison and a second period in community service, such as rebuilding the house of the family he had destroyed or taking care of the children of those he had killed.

The process was by no means easy, but in the majority of cases it can be said it worked. Forgiveness and reconciliation, in fact, were the basis of all the policies implemented by the government, whose stated aim was to mend the ethnic division that had led to the genocide and form a single Rwandan people. Although the Gacaca courts have been widely criticized for failing to comply with the human rights of some defendants, they are at the same time recognized as a successful experiment.

During the trial, anyone who had witnessed a violence carried out by the accused could tell about it and this was decisive in the process of forming a collective memory not only imposed from above but that was born from the community that had experienced that violence.

The Gacacas closed in 2012 and examined about 1,200,000 cases. Of course, among the accused there were those who admitted their crimes and those who did not. Even today, traveling

²⁸⁷ Sullo P., *Beyond Genocide: Transitional Justice and Gacaca Courts in Rwanda*, International Criminal Justice Series 20, Berlin, 2018.

around the country, you can still see men in orange uniforms building roads and infrastructure: they are the ones who have admitted their guilt and are serving their sentences in community service.

In parallel with transitional justice, the reconstruction of the state apparatus has been in progress since 2000. As a first step, a new constitution was drafted, which would be in sharp contrast to those of the past. The charter was approved by referendum in 2003 with a vote in which 90% of those entitled took part. The Presidential Republic was constituted with a president at the head, in office for seven years for a maximum of two terms.

Of the entire constitution, drafted on the German model, Article 10, immediately renamed 'genocide ideology law', caused a worldwide sensation²⁸⁸. This article, in fact, prohibited any form, even verbal, of ethnic discrimination which could lead back to the ideas which had caused the genocide. This crime could result in up to 25 years in prison. Although it is true that similar laws already existed in the world (apologia of fascism in Italy), in the Rwandan text there were several inconsistencies that made it possible to condemn almost anyone. Following significant protests by major international organizations, the law was amended in 2010.

In 2015 a constitutional referendum was proposed to amend Article 101 and reduce the presidential term from seven to five years. The new mandates, however, would not take into account the previous ones and therefore the approval of this amendment gave Kagame the possibility to remain in office until 2034, de facto 40 years after he came to power.

In Rwanda, the powers of the state are distinct as follows:

The judiciary is organized in a similar way to those in Europe that follow the civil law system. At the head of the structure is the Supreme Court based in Kigali and in each province, there are high courts and other small courts in each municipality and district. One of the main objectives pursued by the judiciary over the years has been the fight against corruption, which has lifted Rwanda to 51st place in Transparency International's 2019 ranking, also preceding European countries such as Italy and Greece.

The Parliament is bicameral, consisting of an upper chamber and a lower chamber. A particularity that has made it famous worldwide is that the majority of its Members are female. In fact, in 2018, 61% of the benches of the chamber were occupied by women, which put Rwanda at the top of the world rankings.

The executive has officially been led since 2000 by the man who freed the country from the genocide and who represents the face of Rwanda at home and abroad: Paul Kagame. Although he

²⁸⁸ Uwizeyimana D.E., *Aspects and Consequences of the Rwandan Law of Genocide Ideology: A comparative analysis*, Open Journal of Social Sciences, November 2014.

has often been accused by the media and international human rights associations of being a dictator-like man, it is impossible not to give him credit for all the progress his country has made under his leadership. Corruption has been fought and practically eradicated. Rwanda is a safe country where the police and the army can be trusted and where there is certainty of punishment for those who commit a crime. Kagame has brought the population below the extreme poverty line from 95% in 1994 to the current 20%. Per capita GDP has increased sixfold, infant mortality has fallen from 107/1000 to 27/1000 and all this has taken place in an extremely complex geopolitical context. Rwanda, in fact, is nestled between four states, two of which (DRC and Burundi) are perpetually at war and from which repeated incursions into the country are organized to overthrow the government. Kagame is an acclaimed leader throughout the continent and this has earned him the leadership of the African Union in 2019. What differentiates him from his colleagues and especially from his predecessors is that his work is always oriented towards long-term results. In 2000, only 6 years after the genocide, Kagame proposed a Vision 2020 through which the country would pursue 53 goals, more than half of which were achieved in the first decade. Often accused of illiberal peacebuilding by Westerners, Kagame has always responded with figures and incredible improvements in his country, something that has not happened in any other African country. Probably, however, the greatest achievement he has managed to accomplish is the unity of his people. Rwanda is at peace for 25 years, something that has never happened before, there are schools, universities and 40% of its population have not witnessed the genocide. This percentage will rise significantly in the coming years, given the improvement in living standards and perhaps in twenty years' time those who have seen, and experienced genocide will be only a residual percentage.

In order to prevent a repetition of the events, the government has put in place tools to keep the collective memory alive, through which young people can know and understand the history of their country. Individual and collective memory as well as forgiveness have played a very important role in the Rwandan reconciliation process.

Historically, the meaning of collective memory was initially theorized by Halbwachs²⁸⁹, who explained the importance of analyzing as many memories as there are social groups that form a community, since memory is by nature a social construct and therefore has characteristics of multiplicity and plurality. The thread that unites history and memory is often very thin²⁹⁰. To make memory physical and tangible, modern societies have built and established places of memory, a term coined by Pierre Nora to define places where history and memory meet and which are often

²⁸⁹ Halbwachs M., *On collective memory*, The heritage of sociology, 1992.

²⁹⁰ Margalit A., *The ethics of memory*, Harvard University Press, Cambridge – London, 2000.

monuments, symbols, archives, manuals, commemorations, cemeteries. For Nora, history has a well-defined space in time and separates the years while memory crosses them and brings the past into the present through places of memory²⁹¹.

In Rwanda, memory has been built on two lines: the official one, of the State, which taught it in schools, established memorials and events; the other, the individual and collective one, created by the stories born within the individual communities and brought to light in the hearings of the Gacaca courts.

As Galimberti well explains, the culture of a people is a decisive element in carrying on their memory. Proof of this is the case of the Jews and the Shoah, known, remembered, celebrated thanks to the cultural tools that survivors and subsequent generations possessed, in contrast to the Armenians, whose genocide, although particularly atrocious and bloody, is almost ignored and without memory. Rwanda suffers a similar fate because its stories have always been told by others, mainly French historians and European or North American authors. Memory is not fully adherent to reality because it is told from an external point of view.

The Rwandan case, on the other hand, is to be considered unique, since only two months after the massacre the victims found themselves living with the murderers again and were able to live in peace. Two states were not created, as has often happened in history following a genocide (Armenia, Bosnia, Israel, Sudan), because unity was sought instead of division. The Catholic Church, very deeply rooted in the country, certainly came to help the process of reconciliation. The idea of forgiveness intrinsic to the Christian religion supported the peace process and the priests, who had not played an exactly positive role during the Hutu governments, helped to rebuild the social fabric.

The reasons that motivated me to investigate the issue in depth were mainly two: to understand why Rwanda is the only country that has not split after a genocide and to see if reconciliation, after 25 years of targeted policies, has finally been achieved. To the first question, more than an answer, I made a hypothesis: in 1994 the majority of the Rwandan population was made up of Hutus who wanted to stay in their country, while the Tutsis had power. So none of them had greater motivation than the other to leave and create a new state. However, it is certain that the keystone of unity were the policies of unity implemented by Kagame and the progressive increase in the quality of life. The Rwandans after 1994 were not interested in who was in government but only in having enough food and not risking new conflicts. Kagame and his staff made the two

²⁹¹ Nora P., *Les lieux et la memoire*, Paris, Gallimard, 1984.

possible and in parallel with the policies of reconciliation and development they brought the country together.

On reconciliation, however, my conclusions are positive. Analyzing the results of the survey and the interviews carried out during my stay in the country, I can say that in the majority of cases the ethnic division has been overcome. Young people in Rwanda have little interest in the past and often do not understand its significance. Those who suffered the genocide apparently have little resentment or at least do not let it show. The analysis carried out is not definitive or complete and should be repeated when the number of people born after the genocide is equal to the number who witnessed it. One conclusion, however, can be drawn with certainty: the massacres did not take place for ethnic reasons but for political and economic ones.

European standards are often used in examining African situations and certainly in terms of human rights, development, education and health the results are often not satisfactory. In this work I have tried to understand the phenomenon by exploring it from its original context and the result can only be positive. The problems facing Rwanda today are completely different from those of 25 years ago, and this is already a great achievement. It would be appropriate to replicate the study, interviews and survey in 5-10 years' time to understand what the changes in the country have been.

This work seeks answers in the everyday life of the Rwandan people and analyzes the indigenous transitional process. The dynamics of racism and ethnic division that were created in Rwanda before the genocide are the same that we witnessed in Europe, first during Nazism and then with Milosevic's Serbia. The Rwandan response was very different from the other two, and while the state of Israel was created outside Europe and there are still great tensions between Serbs and Bosnians today, the Rwandan response seems to have been the one that best managed to make peace with an extremely compromised situation. So why not study it?

African wars have often been snubbed by Westerners and labelled as tribal conflicts. If, instead, we really began to study the causes and consequences of such conflicts, it would be easier to understand the everyday life, even in Europe, where one of the hot topics on the agenda is the migration from the Africa. Moreover, deeper analyses would make it possible to understand the dynamics and peculiarities of a continent that in the next few years will become a major player in the geopolitical and economic world games.