

**Psychological Aspects of Post-Conflict Reconstruction: Transforming  
Mindsets: The Case of the *Gacaca* in Rwanda**

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## **Psychological Aspects of Post-Conflict Reconstruction: Transforming Mindsets: The Case of the *Gacaca* in Rwanda**

### **Abstract**

Post-conflict reconstruction in Africa has been preoccupied with the hardware components such as infrastructure development, rebuilding weakened institutions and facilitating socio-economic aspects of development, to the neglect of psychological (software) aspects of reconstruction. What is not in contestation is the idea that sustainable post-conflict reconstruction should happen at all levels including physical, economic, social and psychological. This is because violent conflict, especially of a virulent ethnic form like the genocide in Rwanda, destroys much more than buildings and roads. The psychological aspect of healing is imperative because those who have experienced the horrors of violent conflict are often scarred emotionally and left traumatized. In addition, healing at the psychological level allows for the rebuilding and mending of broken relationships, which is necessary for the human society to remain intact. Scholars and practitioners contend that psychosocial healing is an effective way to reconstruct and rebuild society with an improved quality of life. Against this background, this paper makes an analysis of the *gacaca* process in Rwanda as a method

of culturally sensitive approaches to psychological healing. *Gacaca*<sup>1</sup> in Rwanda is a traditional mechanism of conflict resolution that attempts to address trauma and post conflict reconstruction needs of that country's post 1994 genocide.

The government of post-conflict Rwanda enacted the *Gacaca* Law (2001) to give indigenous courts the mandate to deal with cases of the genocide. Thus, the *gacaca* in Rwanda is one of the largest community based judicial undertakings of the century. There are variant assertions over the role of *gacaca* in promoting healing and post conflict reconstruction. Proponents argue that endogenous methods like *gacaca* courts in Rwanda represent a model of alternative or restorative justice, which are not only cathartic but also conciliatory. However, the adequacy and feasibility of *gacaca* in addressing this psychological need is also put to the test, as this paper will demonstrate. The objective of this paper is to examine the Rwandan case and present recommendations on policies, strategies and instruments for post-conflict capacity-building initiatives.

## **1.0 Introduction**

There are four pillars in post-conflict reconstruction and these are security, justice and reconstruction, social and economic well being and

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<sup>1</sup> *Gacaca* is a traditional mechanism of conflict resolution amongst the Banyarwanda of Rwanda. This method is used to resolve conflict at the grassroots level through dialogue and community justice system. It is an intricate system of custom, tradition, norm and usage.

lastly governance and participation. These pillars are mutually reinforcing and inextricably intertwined. However, most post conflict reconstruction has tended to take place at the socio-economic and political levels, to the neglect of psychological aspects. In Rwanda, the 1994 genocide was such a vituperative form of conflict that scarred ethnic relations broke trust, exacerbated hatreds and promoted the intergenerational transmission of trauma. Deep fear, distrust, depression, and sense of hopelessness can last long after the conflict is supposedly resolved.

Endogenous approaches to conflict resolution are methods that are rooted in the culture and tradition of a community. These mechanisms of conflict resolution emerge from a complex set of knowledge and technologies that were developed around specific conditions effecting particular populations and communities indigenous to a particular geographic area. In *Looking at Africa*, Zartman (2000:7) asserts that conflict resolution mechanisms can only be labeled as endogenous if “*they have been practiced for an extended period and have evolved within African societies rather than being the product of external importation.*” Endogenous conflict resolution methods are unique, informal, communal, restorative, spiritual, context-specific and diverse, apart from being integrated into life experiences. Furthermore, the use of endogenous methods of conflict resolution reflects the centrality of the community from which the fundamental needs of members are satisfied.

Endogenous methods of conflict resolution are based on the premise that,

“ *Understanding conflict and developing appropriate models of handling it will necessarily be rooted in, and must respect and draw from, the cultural knowledge of a people.*”<sup>2</sup>

## **2.0 Background to the Gacaca System**

*Gacaca* is a Kinyarwanda concept which literally means “justice on the grass”. *Gacaca* courts are a traditional Rwandese phenomenon, where people sit on the grass to settle their disputes in the presence of community members. In historical Rwanda, *gacaca* courts were used to settle issues such as land, property, marital and other interpersonal disputes. *Gacaca* hearings are traditionally held outdoors and the system is based on voluntary confessions and apologies by wrongdoers. According to Leah Werchick (2003)<sup>3</sup>, in its pre-colonial form, *gacaca* was used to moderate disputes concerning land use rights, cattle ownership, marriage, inheritance rights and petty theft, among others. Traditionally, *gacaca* courts were run by members of the community known as the *Inyangamugayo* or “persons of exemplary conduct”<sup>4</sup> who were renowned

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<sup>2</sup> Lederach J.P. (1995). *Preparing for Peace: Conflict Transformation Across Cultures*. Syracuse University Press: New York. p.10.

<sup>3</sup> Werchick, Leah. “Prospects for Justice in Rwanda’s Citizen Tribunals.” *Human Rights Brief*, Vol 8 Issue 3, (2003) <http://www.wcl.american.edu/hrbrief/08/3rwanda/cfm>

<sup>4</sup> The term “*inyangamugayo*” is a Kinyarwanda word, which when literally translated means “people who hate evil.” These are persons of integrity who are known to be uncorrupted, and they are appointed as judges in the *gacaca* courts.

for courage, honor, justice and truth. The *inyangamugayo* were special, and were given this role based on their high moral and ethical standards. In traditional Rwanda, when the dispute has been resolved, this would be concluded by a ritual or ceremony, reflecting the symbolic and practical importance of the process. *Gacaca* sessions often ended with the parties sharing drinks and a meal as a gesture of reconciliation. Serious offences would result in the offender being ostracized from the community.

Reincarnated after the 1994 genocide, the *gacaca* courts in present-day Rwanda differ in breadth and depth. As a post-conflict mechanism for justice and reconciliation in Rwanda, the *gacaca* system complements the International Criminal Tribunal for Rwanda<sup>5</sup> and the national Rwandan court system, trying thousands of people who participated in the 1994 genocide. Like in pre-colonial Rwanda, the *gacaca* trials in contemporary Rwanda are chaired by “community judges” known as the *inyangamugayo*. These are elected household heads from the community who are essentially women and men of integrity. The judges receive no salaries but are entitled to free schooling and medical fees for their families. Approximately, 11 000 *Gacaca* courts are operating in Rwanda and each court has a panel of 19 judges (Penal

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<sup>5</sup> The International Criminal Tribunal for Rwanda (ICTR) was established by a UN Security Council Resolution (UNSCR) in November 1994, with the intention of prosecuting high-level *Génocidaires* for violations of international humanitarian law committed between 1 January and 31 December, 1994.

Reform International, 2005 & Uvin, 2005).<sup>6</sup> For a *gacaca* session to be regarded as valid there is a required presence of at least 15 judges and 100 witnesses.

In contemporary Rwanda, during *gacaca* processes, local residents give testimony for and against the suspects, who are usually tried in the communities where they are accused of committing crimes. *Gacaca* is a typical indigenous method of conflict resolution, resembling similar processes that developed over centuries throughout Africa, including the *mato oput* of Northern Uganda,<sup>7</sup> the *gadaa* system among the Oromo of Ethiopia<sup>8</sup> and the *guuirt* of Somaliland<sup>9</sup>. *Gacaca* is a distinctly Rwandan practice, although it has now been instrumentalized and infused with some Western ideas about justice.

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<sup>6</sup>Penal Reform International. (2005). *Gacaca Courts in Rwanda, Presentation of Reform International's research Project on the Gacaca Courts, and Gacaca courts and Community Service*. Date Accessed July 20, 2008 from [http://www.penalreform.org/english/gacaca\\_cs.htm](http://www.penalreform.org/english/gacaca_cs.htm)

Uvin, Peter. "The *Gacaca* Tribunals in Rwanda." *International Idea*. Date Accessed, 20 July, 2008. From [http://www.idea.int/publications/reconciliation/upload/reconciliation\\_chap07cs-rwanda.pdf](http://www.idea.int/publications/reconciliation/upload/reconciliation_chap07cs-rwanda.pdf)

<sup>7</sup> *Mato oput*, the drinking of a bitter herb from the *Oput* tree is a detailed ceremony that is conducted during reconciliation among the Acholi of Northern Uganda. The resolution of the conflict is symbolized by conflicting parties drinking a bitter herb from the same pot.

<sup>8</sup> The *gadaa* is a system of age grade classes that succeed each other in assuming political and social responsibilities. A complete *Gadaa* cycle consists of five age-grades. The authority held by the elders is derived from their position in the *Gadaa* system. For details, read Gumii Bilisummaa Oromiyaa (2000). Understanding the *Gadaa* system: <http://www.gumii.org/gada/understd.html>

<sup>9</sup> The *guuirt* is the highest level council of elders in Somaliland and the highest traditional authority. The council is headed by clan leaders or Sultans, and each council consists of a body of elders which represent the lineages in the clan.

### **3.0 The *Gacaca* as a Post-Conflict Reconstruction and Transnational Justice Mechanism:**

The Rwandan genocide is one of the biggest wartime massacres which occurred in the 20<sup>th</sup> Century. In April 1994, Rwanda was faced with horrific, massive and brutal violence, where, over a period of three months, an estimated 800 000 Tutsis and moderate Hutus were killed, and two million fled the country.

Against this background, the fundamental aspect of post-genocide Rwandan society and politics has been the need for reconciliation to mollify the ethnic tensions characterizing Rwandan society (Tiemessen: 2004). The *gacaca* was reincarnated for both pragmatic and ideological reasons. From a practical standpoint, Rwanda's formal courts faced a backlog of over 120,000 prisoners, living in abject conditions, while the International Tribunal on Rwanda was also being swallowed by its huge case load. It was quite clear that the Rwandan formal legal system and the international criminal tribunal were not going to be able to deal with all these cases of genocide. The *gacaca* was, therefore, a mechanism to decongest the country's prisons by speeding up trials at the community level. From an ideological viewpoint, Gacaca emphasizes the Rwandan government's need to promote culturally relevant approaches to reconciliation. *Gacaca* courts were resurrected in Rwanda as an indigenous form of restorative and transitional justice.

After the 1994 genocide, the Rwandan government passed a series of laws to revive and remodel the *Gacaca* courts. The government of post-conflict Rwanda enacted the Organic Law (1991) and *Gacaca* Law (2001) to give *Gacaca* courts mandate of dealing with cases of the genocide. The Rwandan genocide left 120,000 accused *génocidaires*<sup>10</sup> awaiting trial. The official launch for *Gacaca* operation was conducted in June 2002. Since then *gacaca* courts have been singled out as a pathway to transitional justice and reconciliation in Rwanda.

Conflict destroys social and psychological capital. Psychological approaches to reconstruction like the *Gacaca* are appropriate in communities where there is a history of mistrust and animosity, among various identity groups. Reconstruction at the psychological level is necessary especially given the realization that the state has limited ability to reach to its citizenry's emotional, cognitive and behavioral processes.

By focusing on the healing of victims and perpetrators, *Gacaca* courts in Rwanda represent a model of restorative justice. *Gacaca* is based on the realization that, *“Psychological restoration and healing can only occur through providing the space for survivors to feel heard and for*

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<sup>10</sup> *Génocidaires* is a French term used to refer to people accused of participating in the genocide.

*every detail of the traumatic event to be re-experienced in a safe environment.*"<sup>11</sup>

The main principle of the *Gacaca* is truth telling, which has proven to be cathartic. It is assumed that at *Gacaca* courts, the survivors, witnesses and presumed perpetrators all come together to witness “truth telling” and justice in action. *Gacaca* rewards those who confess their crimes by halving of prison sentences. As a result, hundreds of thousands of prisoners have confessed to participating in the genocide. In addition, the *Gacaca* process requires that all parties participate in a debate on what happened in order to establish the truth, draw up a list of victims and identify the guilty.

There were originally four categories of *génocidaires*, now reduced to three in the Rwandan system of post-genocide justice. The first category comprises the planners, organizers and leaders of the genocide and those who acted in a position of authority to orchestrate murders. When convicted of the offence, perpetrators in this category often get life sentences. However, *Gacaca* courts cannot exercise jurisdiction over individuals in “category one.” This group of defendants falls under the jurisdiction of the Arusha Tribunal. Category two is composed of persons who are accused of voluntary homicide or acts against persons resulting in death. The defendants in this category are accused of having inflicted

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<sup>11</sup> Brandon Hamber, "Do Sleeping Dogs Lie? The Psychological Implications of the Truth and Reconciliation Commission in South Africa," seminar presented at the Centre for the Study of Violence and Reconciliation, Johannesburg, July 26, 1995, 4-5.

wounds with intent to kill or committing serious violent acts which did not result in death. This group of defendants falls under the jurisdiction of the national courts. Category three includes those who committed violent acts without intent to kill. This is the category of *génocidaires* that falls under the Gacaca system of justice.

### **3.1 The Rationale and Imperative for *Gacaca***

In Rwanda, people reported their struggles with *ihahamuka*, which refers to a variety of psychological problems that were thought to originate from the genocide<sup>12</sup>. *Gacaca* courts are an epitome of Rwandan society's capacity to settle its problems through a self-conceived local system of justice and conflict resolution, based on Rwandan traditions and customs (Des Forges: 1999). As a cultural practice and as a psychological process, *Gacaca* should be commended for setting out to achieve difficult goals for post-conflict environments. *Gacaca* seeks to simultaneously achieve Rwanda's conflicting objectives of truth, justice, and reconciliation. *The system* gives people a chance to talk about genocide, and by so doing offers a visible form of justice in which community members have a voice and opportunity to participate in solving their country's problems. As a grassroots and trauma healing effort, the *Gacaca* courts are envisaged to help rebuild the communities that have been so decimated by the genocide. According to Barbara

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<sup>12</sup> *Ihahamuka* is a Kinyarwanda word, which when literary translated means "without lungs". Victims of genocide suffered traumatic disorders.

Oomen (2006), the *gacaca* makes vital contributions to the achievement of justice in the wake of one of the most horrendous mass killings of the 20<sup>th</sup> century.<sup>13</sup>

*Gacaca* involves the process of retelling and narrating accounts of what happened during the genocide by both victims and perpetrators. For victims, the process allows them to open up and narrate their ordeal, and to grieve. During the genocide, many people did not have the opportunity to bury and mourn their deceased loved ones. The Gacaca process fills in this void, but allowing a safe space for grieving and dignified acknowledgement. For perpetrators; it allows them to let out a huge burden. When such narrations are done in a public space such as the *Gacaca* courts, it can lead to what Lederach (1997) refers to as revelation, acknowledgement, apology and forgiveness.

*Gacaca* is a truly *sui generis* approach to transitional justice, accountability for atrocities and reconciliation. Cobban (2002) acknowledges the psycho-sociological role of the *gacaca*, especially its ritualistic format and religious discourse, which arguably facilitate reconciliation and healing. Although it is a collective ritual, being carried out at the sociopolitical realm; Kanyangara et al (2005) posit that the *gacaca* in Rwanda has the potential to significantly address emotional concerns of the Rwandan community in the aftermath of the 1994

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<sup>13</sup> Oomen, Barbara, 2006. Rwanda's Gacaca: Objectives, Merits and their Relation to Supranational Criminal Law. From: [http://www.ceri-sciencespo.com/themes/re-imaginingpeace/va/resources/rwanda\\_gacaca\\_oomen.pdf](http://www.ceri-sciencespo.com/themes/re-imaginingpeace/va/resources/rwanda_gacaca_oomen.pdf) Date Accessed: 20 June, 2008

genocide.<sup>14</sup> Reestablishing community relationships and reintegrating offenders into their communities are important goals of any sustainable peacebuilding process.

In addition, the *Gacaca* process plays the role of preventing the transgenerational transmission of trauma in Rwanda. Vamik Volkan (2005) asserts that if painful memories about past atrocities are not adequately dealt with by one generation, they will contaminate future generations in cycles of violence and counter-violence.<sup>15</sup> Thus, by publicly addressing issues of genocidal trauma, and facilitating the “closure” of this painful episode, *Gacaca* courts contribute towards efforts to prevent the relapse into vengeful violence by future generations of Rwanda. Graybill (2004) also acknowledges the psychological effects of the *Gacaca* hearings.<sup>16</sup>

Thus, *Gacaca* is in tandem with the African concept of *Ubuntu*, which translates to “humaneness,” “solidarity”. *Ubuntu* aims to create an environment where people are able to recognize that their humanity is inextricably bound up in the humanity of other's. *Ubuntu* also encourages people to see beyond the crimes of the perpetrators by seeking to integrate the evildoer back into the community. The *Gacaca*

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<sup>14</sup> Kanyangara, Patrick, Rim, Bernard, Phillipott, Piere, Yzerbyt, Vincent, 2005. Collective Rituals, Emotional Climate and Intergroup Perception: Participation in “*Gacaca*” Tribunals and Assimilation of the Rwandan Genocide. *Journal of Social Issues*, Jun2007, Vol. 63 Issue 2, p387-403, 17

<sup>15</sup> Vamik Volkan, 2000. “Traumatized societies and psychological care: expanding the concept of preventive medicine”, *Mind and Human Interaction*, 11 (3), 2000, pp 177-194.

<sup>16</sup> Graybill, Lyn, S. 2004 , “Pardon, Punishment and Amnesia: Three African Post-Conflict Case Studies,” *Third World Quarterly*, Vol 25, No 6 (2004), pp1117-1130

system is supported by the Rwandese people. Furthermore, the system uses a consensus-based approach, requiring participants to agree on the verdict (Tiemessen: 2004). In addition, a survey conducted by the John Hopkins Center for Communication Programs, indicate that most Rwandans prefer *Gacaca* justice relative to the national courts and the international tribunal.<sup>17</sup>

In addition, from its conception to implementation in post-genocide Rwanda, *Gacaca* has encouraged people in Rwandan communities to work together as voters, witnesses, tribunal personnel, and jurors. This creates a common experience in which everyone works together toward a common goal, thereby replacing the divisive experience of the genocide with the cohesive experience of securing justice. Furthermore, the participatory aspect of *Gacaca* promotes democracy and rule-of-law values by shifting power from the central government to the people and dealing with impunity. Uvin (2005) notes that, approximately 90% of Rwandans participated in an election of *Gacaca* judges in October 2001. In addition, during *Gacaca* proceedings, everyone has a right to contribute to the local court proceedings. Sabera, Mukamurenzi and Musigirende (2007)<sup>18</sup> contend that *Gacaca* is a system of participatory

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<sup>17</sup> A study conducted by the John Hopkins Center for Communication Programs indicated that Rwandans are overwhelmingly in favor of gacaca courts relative to the International Criminal Tribunal for Rwanda. For more details, see 'Perceptions about the gacaca law in Rwanda: evidence from a multi-method study', Center for Communication Programs, Johns Hopkins University, April 2001, p 13

<sup>18</sup> Sabera, Marthe, Mukiga, Annette, Mukamurenzi and Musigirende, Venatie, (2007). *The Gacaca Justice System: A process for reconciliation and sustainable peace*, *Women's World*, Kampala, 2007.

justice - a restructured version of the traditional communitarian system where disputes are settled through community involvement. This decentralization of power and enhanced participation of grassroots people in social change processes is essential for reconciliation and long-term stability in Rwanda. The *Gacaca* in Rwanda has demonstrated the role of culture in conflict resolution and transformation even in so-called modern states. People derive their sense of meaning from their culture. Cultural values and norms determine the way in which people interact with each other (Avruch, 1998). In addition, *Gacaca* courts have a form of soft power derived from their cultural roots.

The *Gacaca* system emphasizes full confessions, repentance and apologies. This helps deal with the culture of impunity that had engulfed Rwanda during the genocide. Through the principle of “truth telling,” the defendant and witnesses are required to give a detailed description of the offence, how and where it was carried out, the victims, and if applicable, information about where their dead bodies were left. Perpetrators who give full confessions of their genocide acts normally have their sentences significantly reduced. Uvin (2003) considers *Gacaca*’s emphasis on confessions to be one of the most innovative and important aspects of this local mechanism. He predicts that confessions can lead to substantially more “truth” than conventional justice systems. In addition, *Gacaca* highlights apology as an important ingredient to promote reconciliation. Those found guilty must demonstrate their

contrition through some form of reparations to victims of performance of community service before being reintegrated into the community. These overtures contribute to the mending of broken relationships and improvements in victims' lives.

Uvin (ibid) recognizes that the total formal and Western-style justice may be an impossible goal in Rwanda. According to Uvin, the *Gacaca* respects the spirit of justice "in a locally appropriate form" which the formal justice system may not be able to achieve." The *Gacaca* process reflects the unison of hybrid approaches to peace and reconciliation by integrating culture and modern approaches in peacebuilding and trauma healing. Hansen (2005) commends the blending of restorative justice principles with the Western legal model, arguing that such cross-fertilization has created a uniquely Rwandan model of post-conflict reconstruction. A major advantage of the *Gacaca* system is that it is Rwandan in origin, which makes it community-based. If citizens feel that a specific institution is foreign, it loses legitimacy and people's trust. The practice of *Gacaca* demonstrates the unique role of culture in building reconciliation institutions. Proponents of *Gacaca* envisage that the institution could transform Rwandan society in several ways, including increasing prospect for democratization.

#### **4.0 Challenges of *Gacaca***

Traditional approaches to conflict resolution have not always been effective in addressing massive cases of trauma. According to Human Rights Watch (2006), *Gacaca* courts have dealt with more than 761 000 accused persons. In addition, *Gacaca* courts are confronted with serious crimes of mass murder and other atrocities, committed during the genocide, issues which are beyond the scope of pre-colonial *Gacacas*. The number and nature of cases are quite overwhelming for the *Gacacas* which were traditionally meant to resolve minor, uncomplicated, local level civil disputes, and were aimed not at establishing criminal guilt, but at community reconciliation. Thus, while often touted as endogenous in orientation, contemporary *gacaca* proceedings have become markedly different from their traditional form. According to Tiemessen (2004), the present day *Gacaca* has been reinvented, and is formally institutionalized and linked to state structures.<sup>19</sup>

Although *Gacaca* was conceived as a traditional institution for communal justice, it has been modernized, formalized and extended, through the state, to operate in the realms of retributive or criminal justice. Although it has maintained the traditional outdoor setting, essentially, the *Gacaca* system operates like a court and still employs the prosecution based approach to justice. According to Article 39 of the

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<sup>19</sup> Tiemessen, Alana. "Rwandan Gacaca: Competing and Collaborating for Justice After Genocide" *Paper presented at the annual meeting of the International Studies Association, Quebec, Canada, Mar 17, 2004* Available Online, [http://www.allacademic.com/meta/p74581\\_index.html](http://www.allacademic.com/meta/p74581_index.html), Date Accessed 17 August, 2008.

Organic Law, No 16/2004, *Gacaca* courts have broad competences, “similar to those of ordinary courts, exercising attributes of investigation, prosecution and judgment.” Given that the *Gacaca* courtroom is a regulated forum, where discussion is strictly restricted to the genocide-related case at hand, not other issues, it is difficult to wholly conceive it as a restorative justice mechanism. Michael Mann (2005) documents how *Gacaca* courts have been used to intimidate the current Rwandan regime's critics and opponents. Thus, the notion that African jurisprudence systems are naturally restorative rather than retributive is challenged, given the somewhat retributive aspects of the *Gacaca*. Such challenges demonstrate that Rwanda still confronts immense difficulty in dealing with its past.

Although *gacaca* valorizes the concept of “truth-telling,” the *gacaca* system is confronted by a well known challenge called “the problem of truth.” Truth telling does not always result in peace. There are repercussions to peace, as manifested in the aftermath of most “truth-telling ventures.” More often, the very act of truth telling involves recounting verbal memories of violence and trauma, a process that may “stimulate” identity-based hatred in the aftermath and subsequently revive identity problems. This is why Minow (1998) describes “truth telling” strategies as falling somewhere in between “vengeance and forgiveness.”

Hamber (1997) adds that truth alone does not always lead to reconciliation. He asserts that, in some cases, truth may lead to reprisals against those who tell the truth. In addition, the problematic of “truth” is compounded by what Lerche (2000) identifies as the elusive, relative and complex nature of “truth.” Lerche (ibid) argues that there are always competing narratives of victimhood, with all sides having their own version of the truth of “what really happened.” Hayner (2001) is equally skeptical of truth, asserting that truths are often multiple, competing, contested and sometimes contradictory.

The *Gacaca* process, while upholding culture in dealing with Rwanda’s past, has been inundated by the “problematic of truth”. In the *Gacaca*, like any other setting for genocide trials, testimony is the primary form of evidence. There is little physical or forensic evidence. The reliance on eyewitnesses can be challenging because some witnesses may be guided by self-interests or fear. There is no guarantee that all eyewitness accounts and confessions are true accounts of the genocide. Lerche (2000) discusses the elusive, relative and complex nature of “truth,” arguing that there are always competing narratives of victimhood, with all sides having their own version of the truth of “what really happened.” The notion of truth is further adulterated by the fact that *Gacaca* encourages confessions, especially if they incriminate one’s co-conspirators. This “confession-centered” approach creates rife conditions for vendetta-setting and vengeance. Thus, sometimes the

*Gacaca* are used to settle private scores or even sometimes for affairs unrelated to the genocide.

In addition, the concept of “truth telling” is often compromised by fear of reprisal by victims and witnesses. One argument often espoused by people who do not want to testify is that “the truth is not pretty” (Mamdani, 2002). Truth does not necessarily invoke mercy and forgiveness. For the witnesses, confronting the *génocidaires* and re-living the events of 1994 can be both traumatic. Truth telling is not necessarily healing at the personal level. For some traumatized people, *Gacaca* means the additional pain of reliving in public the months of fear and horror that have haunted them since the genocide. The Trauma Center for Victims of Violence and Torture in Cape Town found that 60% of those who testified in South Africa's TRC felt worse after testifying. This challenge is worsened by the fact that there is no psycho-social support to assist victims and perpetrators after the *Gacaca* process.

Therefore truth may trigger memories that might lead to vengeance, and therefore a breach of peace. People consider their safety and relations with other community members before they can give authentic testimonies. This is compounded by the lack of mechanisms, procedures and resources for the *Gacaca* courts to protect witnesses. Security has become a real concern for all those involved, and a report from Penal Reform International (2003) suggests that fear has driven participation in the trials sharply downward. Amnesty International

reports that there have been a number of killings and attacks on witnesses who were expected to testify in *Gacaca* courts. To confront this challenge, the Rwandan government passed the *Gacaca* Law which provides for a penalty of one to three years imprisonment for anyone who makes a false testimony or refuses to testify. However, this law is difficult to enforce vigorously because of the relative nature of the concept of truth.

In addition, *Gacaca* faces structural challenges. The nature of the crimes presented before the *Gacaca* courts is widely at variance with the statutes of the *Gacaca* courts. Previously, *Gacaca* courts dealt with miniature disputes between community members. In grave crimes such as massacres, the *Gacaca* courts are largely under-equipped. Des Forges (1999) argues that crimes of genocide necessitate more than community-healing mechanisms<sup>20</sup>. In addition, the *Gacaca* courts have been overwhelmed with the genocide caseload. It is difficult to envisage the efficacy of the *Gacaca* process given that a large part of the population participated in the genocide. The burgeoning caseload is compounded by the fact that the elected *Gacaca* judges have minimal legal training and limited experience in handling issues as grave as genocide. Observation by Amnesty International led to the conclusion that *Gacaca* judges received inadequate training that does not meet the demands of the cases before them. Against this background, it is crucial to acknowledge

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<sup>20</sup> Des Forges, Alison, Liebhafsky. *Leave None to Tell the Story: Genocide in Rwanda*, New York: Human Rights Watch, (1999).

that the cultural aspects of *Gacaca* alone will not meet the practical needs for justice.

During *Gacaca* hearings and prosecutions, there is a high element of community involvement in the proceedings, a phenomenon Peter Harrell (2003) labels, “communitarian restorative transitional justice.”<sup>21</sup> While this maximizes community participation and ownership of *Gacaca* processes, Human Rights organizations have criticized this, arguing that it promotes some kind of “mob justice.” Defendants are not allowed to have legal representation during the *Gacaca* hearings (Human Rights Watch, 2003 & US Department of State, 2004).<sup>22</sup> While cultural approaches to healing are encouraged, when they contradict universal standards and norms on human rights, democracy and participation, their restorative character becomes questionable. *Gacaca*’s challenges in guaranteeing fair trial have led Amnesty International to conclude that, “*Any criminal justice system, no matter what its form, would lose credibility without an adherence to international minimum fair trial standards.*”

However, in reality, the *Gacaca* cannot afford to allow legal representation for defendants because this would further “judicialize” and lengthen the process thereby diluting the traditional and communal

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<sup>21</sup> Harrell, Peter. *Rwanda's Gamble: Gacaca and a New Model of Transitional Justice*. New York: Writers Club Press, 2003

<sup>22</sup> Human Rights Watch. (2003). *World Report 2003: Africa: Rwanda*. Date Accessed July 15, 2008 from <http://www.hrw.org/wr2k3/africa9.html>  
US Department of State. (2004). *Rwanda*. Retrieved July 15, 2008 from <http://www.state.gov/g/drl/rls/hrrpt/2004/41621.htm>

nature of *Gacaca*. Hansen (2005) challenges the idea of introducing Western notions of legality in a uniquely cultural practice such as the *Gacaca*, especially when the majority of Rwandans are seemingly receptive to the practice.<sup>23</sup> Hornberger (2007) contends that high expectations of international legal norms are not practical because it is not feasible for these to be met in post-genocide Rwanda.<sup>24</sup> Despite this point, the *Gacaca* continues to receive further criticism from a legal perspective, owing to the slowness with which cases take to be tried. Due to logistical challenges, there are often delays in trials. This scenario frustrates the defendants' access to fair and quick trials. At present, there are still tens of thousands of suspects who are agonizingly waiting for a trial from *gacaca* courts.

The *Gacaca* is also confronted with the challenge of politics and identity issues. There are fissures even within the Tutsi ethnic group. Tutsis who were in exile in Uganda and those Tutsis who remained behind often have different worldviews about the other. The Tutsis who remained in Rwanda often blame those who were in Uganda for instigating attacks on Hutus, who would in turn retaliate by attacking Tutsis in Rwanda. In the months after the genocide, hundreds of

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<sup>23</sup>Hansen, Toran. *The Gacaca Tribunals in Post-Genocide Rwanda*. Saint Paul, Minnesota: Center for Restorative Justice and Peacemaking, School of Social Work, University of Minnesota, 2005. From [http://rjp.umn.edu/img/assets/13522/Gacaca\\_Tribunals.pdf](http://rjp.umn.edu/img/assets/13522/Gacaca_Tribunals.pdf). Date Accessed: 20 July, 2008.

<sup>24</sup> Hornberger, Kusi. Rwandan *Gacaca* Courts in Crisis: Is there a case for Judicial Review?, *African Policy Journal*, Spring 2007, Vol 3,

thousands of Tutsi refugees returned to Rwanda. Many of these Tutsi ex-refugees have no connection with Rwanda, having left the country in 1959. Most Tutsis were refugees in Uganda and figures from the Organization of Africa Unity (OAU) indicate that the return migration almost totaled 750,000 people. Lisa Malkki (1995) argues that the collective return of a large group of people in the “homeland” may set in motion processes that they have no control over. Thus, the *Gacaca* process takes place in the context of a Rwanda that is dealing with recent immigrants who have no real connection the Rwandan genocide.

Observers perceive the *Gacaca* tribunals as being inequitable, one-sided and ethnically biased because it seemingly focuses on crimes committed by the Hutus against the Tutsis. *Gacaca* does not deal with the atrocities committed by the then Tutsi based rebel movement, Rwandan Patriotic Front (RPF) which mobilized in Uganda. According to Human Rights Watch (1994), prior to the 1994 genocide RPF destroyed property, recruited child soldiers against their will, carried out systematic slaughter of civilians, displaced thousands and committed human rights abuses as they launched attacks on the Rwandan government. The government refuses to allow the *Gacaca* to judge crimes against humanity perpetrated by the rebel soldiers from 1990-1994. Although *Gacaca* was conceived as a reconciliatory justice, its potential for inciting ethnic tension should not be underestimated especially if Hutus continue to perceive it as an instrument of Tutsi power.

There is concern that *Gacaca* courts are not totally reflective of the public participation they espouse. It appears there is reluctance to actively participate in the *gacaca* process, except for the showing up. Observation indicates that community members are not very forthcoming in naming accused persons and in recounting their experiences and witness of the 1994 genocide. This reticence during *Gacaca* court processes may be explained by participants concerns over their security in the aftermath of the *process*. Inadvertently, the *Gacaca* has often ended up being an elite driven process, which is very much top-heavy. John Paul Lederach (1997) is critical of top-bottom approaches to peacebuilding, which he says are not sustainable in building durable peace. His multi-layered peacebuilding pyramid, presents the opportunity for different segments of the society to be involved in the peace process, thereby ensuring a more stable and sustainable peace.

Cultural approaches to conflict resolution are not immune to abuse, manipulation and politics. Osaghae (2000) observes that,

*“The relevance and applicability of traditional strategies have been greatly disenabled by the politicization, corruption and abuse of traditional structures, especially traditional rulership, which have steadily delegitimized conflict management built around them in the eyes of many and reduced confidence in their efficacy ...”* (Osaghae, in Zartman: 2000: 215).

Mamdani (2002) agrees and stresses the fact that during the *Gacaca* sessions, victims are almost solely seen as “Tutsi genocide survivors,” hence his conclusion that *Gacaca* courts enforce a victor’s justice. Observers point out that there is a tendency for *Gacaca* to assign collective guilt to Hutus (Drumbl: 1999). Ultimately, there could be a risk of polarizing and further dividing the Hutus and Tutsis. In fact, Hornberger (2007:10) notes that,

*“As time has progressed, Rwanda continues to be a polarized country, one still not ready to overcome the tragedy of the 1994 genocide.”*<sup>25</sup>

Identity in post-genocide Rwanda is tied to ethnicity and people’s participation in the genocide. Tiemessen (2004) notes that despite the government’s agenda of forging a single political identity of Rwandans, the identity of participants in the justice process is dangerously linked to ethnicity. She adds that the victors in this process are Tutsis, while the Hutus are usually the vanquished. Against this background, Corey and Joireman (2004: 86–7) are concerned that *“without the equal application of the Gacaca process to both Hutu and Tutsi, it will be perceived more as revenge than reconciliation.”*<sup>26</sup>

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<sup>25</sup> Hornberger, Kusi. Rwandan Gacaca Courts in Crisis: Is there a case for Judicial Review?, *African Policy Journal*, Spring 2007, Vol 3,

<sup>26</sup> Corey, Alison and Joireman, Sandra, F. Retributive justice: The Gacaca courts in Rwanda, *African Affairs* 103:73-89 (2004)

Scheffer (2004) asserts that the *Gacaca* does not try pre-1994 cases of atrocities that were committed by the Rwandan Patriotic Front. This has tended to immunize one ethnic group, the Tutsis against the imperative to account for their actions before 1994. As a result of the ethnically charged categorization of *Gacaca*, hundreds of Rwandan Hutus have fled the country in fear of retribution from the *Gacaca* courts. There are even concerns that such a scenario presents an opportunity for a relapse into vengeful violence in Rwanda. *Gacaca* can only be understood and evaluated against the backdrop of the Rwandan political context of Tutsi ethnocracy and exclusionary politics. The unequal political climate may ultimately militate against the efficacy of the *Gacaca* in pursuing justice, reconciliation and healing.

Furthermore, the *Gacaca* system of conflict resolution faces challenges because of gender issues. Traditional African indigenous structures were largely exclusionary on the basis of gender. The majority of indigenous women were not included in the primary structures of decision making. Currently, sexual offences are not provided for under *Gacaca* law. It is difficult to have witnesses in sexual offences and crimes committed during the genocide. Such a realization leads Conley and O'Barr (2005) to assert that culture is gendered. This reflects how the traditional patriarchal culture has been resurrected in modern Rwandan society. Ultimately, culture is used to perpetuate and reproduce inequalities between men and women.

In addition, the *Gacaca* judges have received no training on gender based violence and its relation to justice. The andocentric nature of the *Gacaca* system is one reason why crimes of rape during the genocide are underrepresented in the Rwandese post-genocide healing process. Most women are reluctant to come forward to a male dominated trial system. There has not been adequate preparation for the communities to address issues of rape during conflict. Most often, women who are victims of rape during the genocide are afraid to testify in the *Gacaca* courts because it will be a woman's word against the accused.

In some cases, the *Gacaca* system does not seem to be achieving the set objective of declogging Rwanda's prisons. In fact, it seems that *Gacaca* hearings merely facilitate the "rotation of prisoners" because while some prisoners are being released from national courts, others are convicted by the *Gacaca* are being incarcerated. In addition, the *Gacaca* process has tried many young people and subsequently, Rwandan prisons are over packed with young génocidaires, who may have been minors at the time of the acts or victims suffering from serious trauma (Fierens: 2005).<sup>27</sup> While young people did participate in the 1994 genocide, it cannot be established with utmost certainty that they had genocidal intent. In addition, it is difficult to attribute genocidal intent to youth participation in wartime atrocities because young people are usually victims of their own innocence and powerlessness.

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<sup>27</sup> Fierens, Jacques. "Gacaca Courts: Between Fantasy and Reality." *Journal of International Criminal Justice* 3(4), (2005): 896-919

## **5.0 Implications of *Gacaca* for Conflict Resolution**

The *Gacaca* experience in Rwanda demonstrates the complexity and tensions between the concepts of justice and peace. In most cases of genocide, finding the right balance between justice and reconciliation or between retribution and forgiveness can be an extremely delicate process. Wendy Lambourne<sup>28</sup> is concerned with the challenges and dilemmas of meeting the need for justice in the aftermath of violence because sometimes, justice tends to compete with reconciliation. The discord between justice and reconciliation leads Bertram to conclude that the question of “amnesty and reconciliation are one of the most troubling quandaries for peacebuilders.”<sup>29</sup>

Understanding the *Gacaca* in Rwanda requires that conflict resolution scholars use the concept of “ethnoscape” in conflict analysis and peacebuilding processes. Ethnoscape is a combination of landscape and ethnography, which basically means that one has to take culture in context. In the Rwandan context, ethnographies of local contexts have been expanded to include the influence of Diasporas and refugees. We cannot understand the dynamics of a conflict without understanding how people and issues are spread out. There is need to understand the

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<sup>28</sup> Lambourne, Wendy 2004 Post-Conflict Peacebuilding: Meeting Basic Needs for Justice and Reconciliation in *Peace, Conflict and Development*, Issue Four, April 2004, ISSN 1742-0601

<sup>29</sup> Bertram, E , “Reinventing Governments: The Promise and Perils of United Nations Peacebuilding” in the *Journal of Conflict Resolution*, 39:3 (September 1995)

“Hutu-Tutsi”, “Tutsi-Tutsi” and “Hutu-Hutu” dynamics in the *Gacaca* processes.

## **6.0 Recommendations**

The ethnic conflict in Rwanda is not primordial in orientation and manifestation. Instrumental and social constructivist arguments on culture and ethnicity posit that even the so-called ethnic conflicts have economic causes. Thus, poverty and inequality among groups are the major factors which incite or compounds tension between groups. The former United Nations Secretary General, Kofi Annan identified the nexus between poverty, development and conflict in the United Nations 2005 report.<sup>30</sup> Paul Collier<sup>31</sup> contends that economics plays a role in the manifestation and nature of conflicts in most poor countries. Other scholars posit that it is not enough to make peace, without addressing structural causes of war, such as hunger and poverty, must be treated at their roots.<sup>32</sup> Thus, socio-economic differences between groups in Rwanda have to be addressed. The development context in Rwanda needs to be responsive to processes of transitional justice, trauma healing and reconciliation. Against this background, it is imperative to

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<sup>30</sup> In *Larger Freedom: Towards Human Rights and Security for All*; Report of the UN Secretary General for Decisions by Heads of State and Government in September 2005

<sup>31</sup> Collier, Paul *Economic Causes of Conflict and Their Implications for Policy* in Chester, A et al (eds) *Managing Global Chaos*, Washington DC, United States Institute of Peace

<sup>32</sup> Asle Sveen, a Norwegian historian, commenting on the award of the 2006 Nobel Peace prize to Mohammad Yunus, an economist who founded the Grameen Bank, quoted in *Agence-France Presse*, October 13, 2006

promote a broad-based and inclusive economic development in Rwanda because peace without development is not durable. In fact, calls for peace and reconciliation may not be meaningful for ordinary citizens in the absence of economic opportunity. In addition, to achieve true reconciliation in the Rwandan post conflict reconstruction environment, the words of Mahmood Mamdani need to be taken seriously. “To contextualise the truth is to recognise that Rwanda is at a political crossroads where political leadership is faced by two clear options. The first is the continuation of the civil war, as those defeated in the last round prepare for the battle in the next; the second is its termination through political reconciliation that rejects both victory and defeat and looks for a third more viable possibility” (Mamdani: 2001:270). Specifically, therefore changing mindsets in post-conflict situations should take into consideration the following policy recommendations:

- Given the dominance of the Rwandan state and exclusionary politics in the *Gacaca*, there is a need to strengthen the role of civil society in processes of transitional justice. It is difficult to envision a peaceful Rwanda over the long-term, with the absence of an engaged civil society;
- One prerequisite of the success of *Gacaca* is the improvement in material well-being for all groups. This calls for a comprehensive peacebuilding strategy which should be supported by donors, the government and non-governmental organizations. This process has

begun by some international NGOs engaging both Hutu and Tutsi in cooperative micro-credit schemes and other economic empowerment programmes. Such activities must gain support from both national and international agencies and donor organisations;

- It is important for the Rwandan government to adopt measures to protect the personal safety of witnesses and victims, without adulterating the process of transitional justice. It is equally important for the *Gacaca* courts to ensure that the accused have the right to a fair trial. This can be achieved through mechanisms for ensuring that *Gacaca* defendants, especially those facing long terms of imprisonment, have the right to appeal to the formal court system;
- To ensure that the *Gacaca* process is not continually perceived as Tutsi ethnocracy and “justice for the powerful”, the government of Rwanda should give the *Gacaca* mandate to handle trials of atrocities committed by RPF forces prior to 1994;
- Civil society and the international community should continue to support the Rwandese government in implementing the *Gacaca*. For monitoring purposes, civil society organizations should be given access to *Gacaca* proceedings. This will ensure that the *Gacaca* becomes an effective and transparent system which promotes justice, healing and reconciliation;

- *Gacaca* judges should continually receive training to enhance their capacity in handling cases;
- Although there seems to be deliberate efforts to encourage victims and perpetrators alike to “truth telling”, it is not clear if this process helps in trauma healing especially for the young. Whilst it is true that traditional Rwandan society relies on community healing, lessons should be taken from the community healing play book and transferred to individuals who may be suffering from post-traumatic stress disorder. Providing psycho-social assistance is a crucial component of any response to post-conflict peacebuilding. These should be long-term interventions with a long-term commitment from authorities, donors and civil-society organisations. Efforts by organisations like Save the Children-US in Rwanda by providing counseling services to children and youth must be encouraged and replicated;
- Additional activities to compliment processes in the *Gacaca* system such as traditional dance festivals, religious group activities, community discussions, football and other social activities need to be further encouraged and strengthened. Seminars and other psycho-social training sessions and workshops should continue to be supported and implemented at all levels of society;
- Conferences such as the one moderated by Hizkias Assefa in September 1995 and funded by Catholic Relief Services (CRS) that

brought together government officials and civil society representatives to discuss issues of reconciliation and post-conflict societal transformation should continue to be supported by donors and the international community. Such conferences play a critical role in re-establishing trust, rebuilding relationships and establishing a vision for the future of Rwandan society;

- A critical post-conflict reconciliation and peacebuilding effort is the mainstreaming of conflict transformation and conflict management programming into development programmes. Sustainable peacebuilding will require aid and development workers and organisations to develop conflict sensitivity into their work. This will require extensive consultations with local communities and government agencies working together to ensure development programmes address issues of poverty, disease and underdevelopment in Rwandan society;
- It is important to address the exclusionary nature of *Gacaca*. There is a need to create a framework that is a hybrid between indigenous African traditions and modern principles to ensure the respect and protection of human rights of all members of society, especially vulnerable groups such as women and youth;
- The government of Rwanda and its international supporters must take seriously what Mamdani has called a shift away from victors and survivors justice and embrace instead a reconciliatory

approach that blends justice with democracy, a system that recognizes the salience of two political identities in Rwanda – one of which is a majority political identity and the other a minority political identity. The question of political justice must go beyond holding perpetrators accountable. It is about political identification, and we agree with Mamdani that in order to reach true justice and reconciliation, this determination of political identities has to be made to be followed by true justice with democracy; and,

- Increased and coordinated donor support of the judicial processes around the *Gacaca* is important so that the process becomes more efficient and transparent.

## **6.0 Conclusion**

The *gacaca* has been a mixed success, although it is definitely cited as a community owned process of transitional justice. Most Rwandans owned the *gacaca* process from the beginning as they did participate in the election of the judges. One key achievement of the *gacaca* is that it provided space for the truth to be told about the genocide. *Gacaca* processes are paving the way for healing, reconciliation and forgiveness.

Despite its positive score on transitional justice, the *Gacaca* has not been spared of criticism. Although this case study is often used as an

example of a successful restorative justice, the *Gacaca*, as a system of conflict resolution and healing, has not significantly altered the victim-perpetrator narratives. The *Gacaca* case study reveals that traditional mechanisms of conflict resolution are often contradictory. *Gacaca* simultaneously encompasses various features including retribution, restoration and reconciliation. As the *Gacaca* has demonstrated, endogenous methods of conflict resolution often interact with various contexts to produce a transformed phenomenon. Although the *Gacaca* system has many shortcomings, it has the potential to work towards healing and peacebuilding in Rwanda. Cobban (2006) posits that *gacaca* is a risky yet necessary pathway to break the cycle of fear, distrust, and violence of the past, an imperative for confronting the legacies of the genocide. At the very least, *Gacaca* might help Rwandans in truth telling about the 1994 genocide rather than promoting collective amnesia. Most importantly, despite the flaws in *Gacaca* courts, there is practically no other viable alternative to deal with the massive cases of trauma caused by the genocide. What remains is for the *Gacaca* processes to be reformed in order to ensure that international standards of fairness in trials are upheld and that past human rights abuses are handled through restorative justice. This will not only provide an opportunity for closure to this tumultuous event, but will also enable both the victims and the perpetrators to take part in a process of reconciliation. Overall, *Gacaca* ought to be given a chance.

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