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**TRANSITIONAL JUSTICE IN A POST-GENOCIDE  
SCENARIO: TOWARDS RECONCILIATION IN  
RWANDA**

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## **ABSTRACT**

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In 1994, Rwanda suffered one of the greatest genocides in contemporary history and was forced to adopt a Transitional Justice system that would allow society to heal. However and unlike many similar situations, Rwanda's Transitional Justice principal aim seeks national reconciliation between victims and perpetrators, through the implementation of policies and mechanisms that accompany victims and perpetrators to share a common goal: unity.

One of the main judicial mechanisms adopted in Rwanda are the Gacaca Courts, a traditional community court system that had been almost diminished during the colonization period. New Rwandan Organic Laws were necessary in order to readjust these Courts formula, allowing them to foresee a confession and guilty plea procedure, encouraging perpetrators to tell the truth, show remorse and ask for forgiveness.

Gacaca Courts combine two elements that have become fundamental for enemies to live together again: fulfilling the victims' legitimate desire for justice, while proposing an unusual tool rather unknown throughout history, which is forgiveness.

Numerous sociologists have set their sights in Rwanda, as it is one unique case in which national reconciliation is being possible, permitting two sought enmity tribes to live together again peacefully. Rwanda is nowadays witnessing a successful reconciliation between victims and perpetrators.

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## 1. INTRODUCTION

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Post-genocide scenarios have shown that hurt and soled civilizations require special mechanisms in order for them to be able to heal. To comprehend this averment, there are some terms that ought to be defined. On one hand, the term “*Genocide*” was first used by Raphaël Lemkin in 1944 in his book “*Axis Rule in Occupied Europe*”. This word has its origin in Greece, where the prefix “*genos*” means “tribe”, while the suffix “*cide*” in Latin means “killing”. Therefore, “genocide” etymologically means the killing of the tribe. On the other hand, when referring to the mechanisms that are needed for post-genocide societies in order to heal, the term and qualifier “*special*” of the needed mechanisms comes with the fact that these tools or mechanisms are not present in a normal society that has not suffered genocide or any kind of gross human rights violation. Instead, these are extraordinarily devised for civilizations that have suffered genocide, but only for a specific and pre-determined amount of time. Thus these mechanisms are not intended to be bestowed to a society indefinitely nor permanently, but to survive for a specific extent of time, as an exceptional remedy to the soled civilization.

These mechanisms can pertain to one field or another. There are, indeed, social mechanisms, educational mechanisms and medical mechanisms, amongst many others. But in particular, one of the most required mechanisms is the judicial one. In a judicial field, these mechanisms are known as “*Transitional Justice*”. On one hand, the term “*Transitional*” belongs to “transition”, which means the process of changing from a state or situation to another. This process evokes to an intermediate state that occurs between the ancient and the future state. On the other hand, the term “*Justice*” qualifies this transition, vesting this word with a specific meaning: the justice system that takes place between the ancient and the future situation.

In a post-genocide scenario, Transitional Justice will refer to the ways the soled society addresses systematic human rights violations, as a normal justice system is not capable enough of providing an adequate response. At the same time, this intermediate justice can imply many sub-mechanisms. For instance, Transitional Justice could imply the creation of new institutions, the imposition of higher penalties for the perpetrators, the adoption of new and temporary legislation... In words of the Office of the High Commissioner for Human Rights of the United Nations, Transitional Justice consists of judicial mechanisms including prosecution initiatives, reparations, truth-seeking, institutional reforms, etc.<sup>1</sup> However, as said, not every post-genocide society will adopt the same number or the same kind of judicial mechanisms, as each scenario requires specific and unique treatment. As to the number of judicial mechanisms to be applied, a civilization suffering from a genocide that has taken 10.000 lives cannot apply as many mechanisms as a civilization that has lost 2.000.000 lives. As per the kind of judicial mechanisms to be applied, a civilization suffering from a gross

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<sup>1</sup> Official Website of the High Commissioner for Human Rights of the United Nations: <https://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/TransitionalJustice.aspx>

economic, social and cultural rights violation cannot receive the same treatment that the one granted to a civilization suffering from torture on a large scale.

Although it is indisputable and noticeable that every post-genocide scenario ought to obtain particular treatment, it is crucial noting that, at the present, there is no international imperative rule that imposes an obligation to set certain mechanisms in a society that is trying to recover from genocide. Therefore, there are no specific and imperative boundaries on the type nor the number of mechanisms that have to be applied, as well as it doesn't currently exist a binding and imperative guide that obligates the authorities or civilians to follow a certain pattern or criteria. The only boundaries that must be respected are, precisely, human rights. There is no justification on violating human rights, no matter the context or situation, not even by the aims of Transitional Justice. The only violation to be permitted today is the retirement of the right to liberty to those that are considered guilty or participants in any kind of the genocide or gross human rights violations.

Notwithstanding the above, what has been done by United Nations in the field of Transitional Justice is assisting with developing standards and operational rule of law tools. These standards are contained, primarily, in seven different documents. The first one, and maybe the most important, is the report "The Rule of Law and Transitional Justice I Conflict and Post-Conflict Societies"<sup>2</sup> of August 23<sup>rd</sup> 2004, reported by the Secretary-General. But it is only a report that pretends to highlight key issues and lessons learned from the Organization's experiences in the promotion of justice and the rule of law in conflict and post-conflict societies, accompanied by a second report called "Uniting Our Strengths: Enhancing United Nations Support for the Rule of Law"<sup>3</sup>, of December 14<sup>th</sup>, 2006. The other five documents are Resolutions adopted by the General Assembly.

The object of this research is the study of the Transitional Justice system adopted in Rwanda following the genocide that occurred in 1994 where, approximately, 800.000 people were killed, 250.000 women were raped and 95.000 children were left orphans, as well as the 2.000.000 civilians that had to leave their country and become refugees. This unfortunate slaughter was triggered by political events that arose during the previous years before the genocide. The gross human rights violation has been one of the most severe and grievous ones in all human history. In fact, it may be the closest to our time. So close that, at the date, Rwanda is still healing. Accordingly, not only the right to live was violated, but numerous others that will be identified throughout this research.

The Tutsis population was the one that suffered the genocide, which was carried out by the Hutus, causing more than 120.000 detentions and accusations. Rwanda, as a third-world

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<sup>2</sup> S/2004/616 of 24 August 2004: "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies" – Report <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement>

<sup>3</sup> A/61/636 – S/2006/980 of 14 December 2006: "Uniting Our Strengths: Enhancing United Nations Support for the Rule of Law" – Report <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/661/01/PDF/N0666101.pdf?OpenElement>

country, didn't have enough resources to deal with such an overwhelming number of perpetrators, and needed an urgent judicial response to hold them accountable for their actions. Rwanda's national court system wasn't enough, so the United Nations had to intervene. United Nations' solution was pursued on the creation of an "*ad hoc*" tribunal known as "International Criminal Tribunal for Rwanda", established on November 8<sup>th</sup>, 2004. Thence there was an existing relationship between Rwanda and the United Nations, which began in 1962, being admitted on 18<sup>th</sup> September.

Nonetheless, the International Criminal Tribunal for Rwanda and the national court system of Rwanda still weren't enough to address all accused, and there still was a large number of perpetrators awaiting to hear their trial. For this reason, Rwandan government re-established the traditional community court system called "*Gacaca*", which became operational in 2005, eleven years following the genocide<sup>4</sup>. These courts were also re-established because of the fact that many lawyers and judges had been murdered during the genocide. Even surviving lawyers and judges had fled the country. The number of lawyers and judges left in Rwanda was quite low, so they had to come up with the idea of training new lawyers and judges, although the process wasn't as fast as they needed it to be. However, "*Gacaca Courts*" didn't require official judges.

These so-called "*Gacaca Courts*" work in a very different way than western's judicial systems do. One of its particularities is associated with the fact that this system seeks reconciliation between victims and perpetrators as a way of keeping moving on and healing the entire community. This reconciliation is maintained by two separate principles: truth and forgiveness. In relation to the principle of truth, "*Gacaca Courts*" are known for trying to provide the victims the possibility to learn the truth about the death of family members and relatives. By these means, the perpetrator had the choice of confessing its crimes during trial. When confessing, the victims could have the chance of learning the truth. Without this step, it could be impossible to achieve the second principle: forgiveness. Knowing the truth about what happened to a family member or relative, the victims could start a path, at their choice, towards acceptance and forgiveness. This whole process could provoke a very different punishment to the accused, a punishment that wouldn't be considered when not confessing and being forgiven.

The centre of this research, then, will be "*Gacaca Courts*" and its effectiveness, by means of whether reconciliation has been achievable with this judicial system or not. Hence, during the research there will be various aspects to be acknowledged: first of all and probably the most evident, Rwanda's previous political system, division and the importance of the United Nations in Rwanda's government; Secondly, the occurring of the genocide, the identification of the rights violated, the perpetrators and the victims; Thirdly and one of the two parts this research will be focused on, the Transitional Justice adopted in Rwanda and, in particular, the "*Gacaca Courts*" as the courts in charge of prosecuting the perpetrators, as well as the United Nations intervention, with its instruments "*ad hoc*"; and Lastly and the second spotlighted

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<sup>4</sup> <http://www.un.org/en/preventgenocide/rwanda/pdf/bgjustice.pdf>



part of this research, the consequences, the healing and the reconciliation that took and is still taking place in Rwanda.

In order to be able to study these four aspects, there are two required main elements that will have to bolster this investigation. Without the following two elements, this research would not provide as much knowledge as it should. The first element is the existence of a hypothesis to begin with the research. The second element is the different sources to prove or refuse the hypothesis.

As to the first required element, the hypothesis entails the existence of an assumption made from data as a basis to initiate an investigation. The hypothesis that motivates this research is presuming that Gacaca Courts have indeed contributed and permitted reconciliation between victims and perpetrators and that this reconciliation has a key role in the healing process on a post-genocide scenario. Not only the healing process of the society as a whole, but even the personal and most intimate human healing process. This assumption dares to imply that reconciliation could be even more overriding than punishment per se. However, it's necessary to reflect in the fact that reconciliation *needs* justice. So reconciliation must work hand-to-hand with the justice system.

As to the second required element, there are different sources that will shed some light for being able to accept or refuse the previous hypothesis. These sources can be divided into six branches: the first branch includes all written works, such as essays, books, reviews and articles that explain or refer to Rwanda's genocide and reconciliation process. The second branch will hold audio-visual works, such as documentaries and videos. The third branch will incorporate the judgements in charge of "*Gacaca Courts*", regardless written or recorded. The fourth branch will be an interview with a specialist in forgiveness in Rwanda, whose name is Pedro Jota Armengou Freixa. The fifth branch will be expert's theories about Transitional Justice.

## 1. RWANDA'S BACKGROUND

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### 2.1 *The Tribes*

Prior to the genocide, there were three well-known and distinctive tribes: the Hutus, the Tutsis and the Twa. The Twa were thought to be the oldest tribe, since they were thought to have been the ones who settled in Rwanda<sup>5</sup> thousands of years Before Christ. Thousands of years later, Hutus migrated to Rwanda and were later followed by the Tutsi. The distinction between Hutus and Tutsis was mainly determined by its function in the human chain set out in Rwanda: the Hutus were in charge of the cattle, while Tutsis took care of land farming. By 1800 After Christ, Rwanda was ruled by the Tutsi clan by means of a reign under the orders of King Kigeli IV Rwabugiri<sup>6</sup> who was the first Rwandan King to come into contact with Europeans.

### 2.2 *Expeditions in Africa*

It is important to note that, while Rwanda was already under an apparently well-settled regime, Africans were still being treated by Europeans as indigenous people. However, Africa was one of the biggest spotlights for all European Powers because of its gold, the lands and many other riches that came with its possession. Africa was then considered to have been discovered by Germany.

Africa, then, was one of the main focuses of the Great Powers: France and Germany, amongst others, had already initiated their own expeditions. And, besides them, lower powers such as Belgium had also started to claim some territories, although the already mentioned Germany and France, as well as Portugal, were trying to exclude these smaller ones from any chart. Moreover, the Great Powers even had problems with each other when delimiting the control over certain African lands. Therefore, King Leopold II of Belgium convinced France and Germany that a common trade was going to achieve better everyone's interests as well as it would guarantee respect towards the smaller powers' interests would be kept. Germany actively and positively responded by calling the thirteen European nations and the U.S. to take part in Berlin's Conference.

### 2.3 *The Berlin Conference and the General Act*

The Conference in Berlin began on November 15<sup>th</sup>, 1884<sup>7</sup>. All nations invited participated in the Conference, who where the following ones:

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<sup>5</sup> CHRÉTIEN, J. (2006), *The Great Lakes of Africa: Two Thousand Years of History*, Zone Books, p. 44.

<sup>6</sup> GOUVERITH, P. (1999) *We Wish to Inform You That Tomorrow We Will Be Killed With Our Families: Stories From Rwanda*, Bestselling Backlist, p. 47.

<sup>7</sup> ROSENBERG, M. (2018), "The Berlin Conference of 1884 – 1885 to Divide Africa", *ThoughtCo*.

Austria-Hungary
Belgium
Denmark
France
Germany
Italy
Netherlands
Ottoman Empire
Portugal
Russia
Spain
Sweden-Norway
United Kingdom
United States

Bismarck<sup>8</sup> was assigned as the President of the Conference since Germany had accepted Belgium’s proposal and promoted this reunion, which took place at Bismarck’s residence<sup>9</sup>.

All representatives signed the General Act, leaving by written all those agreements achieved during Berlin Conference. The “preamble” of the General Act stipulated which follows:

*“WHISHING, in a spirit of good and mutual accord, to regulate the conditions most favourable to the development of trade and civilization in certain regions of Africa, and to assure to all nations the advantages of free navigation on the two chief rivers of Africa flowing into the Atlantic Ocean;*

*BEING DESIROUS, on the other hand, to obviate the misunderstanding and disputes which might in future arise from new acts of occupation on the coast of Africa; (...)*<sup>10</sup>

Hence, the Berlin Conference established the regulation of the acquisition of African colonies. Germany, in particular, acquired Rwanda and Burundi. However, Germans ruled Rwanda respecting the Rwandan monarchy and by trading favours: they would let the Rwandan King use their military equipment and skills in exchange of a proper welcome. Germany, however, started believing that the Tutsis were racially superior to the Hutus, so they started granting authority roles to the Tutsis.

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<sup>8</sup> Otto von Bismarck was the first Chancellor of the German Empire between 1871 and 1890.

<sup>9</sup>LOUIS, W. R. (2006), “Ends of British Imperialism: The Scramble for Empire, Suez, And Deconolonization” *Foreign Affairs*.

<sup>10</sup> The Berlin Act available at: <https://www.sahistory.org.za/archive/general-act-berlin-conference-west-africa-26-february-1885>

## ***2.4 Belgian Forces in Rwanda***

During World War I, Belgians took control over Rwanda's territory. When they arrived, they found a feudal society with a Tutsi monarchy that had no intention to change neither their administrative nor political systems. Therefore, Belgium did not stop the Tutsis from winning superiority over the Hutus. Moreover, the European country even created identity cards classifying all individuals into different groups or tribes.

In order to control Rwanda, Belgium took advantage of the existing organisation there and considered implementing, on one hand, the catholic religion and, on the other, a new language: French. The Rwandan King was baptised and all the community did the same.

Nowadays, Rwandan Government has even considered the idea that Belgium was the country that began separating civilians into tribes. Although this cannot be taken into consideration at all since Belgium only contributed in a cause that was already taking place in Rwanda. For instance, they gave favourable treatment with administrative roles to a certain tribe but Tutsis were already in charge and had already the control of all the territory.

## ***2.5 The Revolution***

Twenty years later, the wave of decolonization started. Tutsis wanted to be an independent state and when Belgians noticed their intentions, they decided to favour the Hutus class, to the point that the independence was carried out by Hutus. Furthermore, nine Hutus intellectuals wrote the "*Manifeste des Bahutu*" (1957), a document containing ten pages, which denounced the "exploitation" of Hutus carried out by Tutsis. The aims of this document were, on one hand, to liberate all Hutus and, on the other hand, to announce that it was time to end Tutsis "monopoly":

*"We want institutions to be created to help the efforts of the disabled Hutu population by an indigenous administration, which seems to want to see the Hutus remain destitute and therefore unable to demand the effective exercises of his rights in their country.*

(...)

*While we agree that the current Tutsi administration is becoming more and more involved in the country's government, we nevertheless think we should war against a method, which, while tending to the suppression of black-white colonialism, would leave colonialism worse for the Hutu."<sup>11</sup>*

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<sup>11</sup> "*Manifeste des Bahutu*" - Translated version from the French document available at <http://francegenocidetutsi.org/ManifesteDesBahutuLettreEtCommentaires1958.pdf>

As said, the Hutus had already built a strong trust with the Belgians who permitted the publication of this “*Manifeste des Bahutu*”. This was to become the trigger that sets off the Rwandan Revolution.

Following this publication, many Tutsis had to leave Rwanda because Hutus began to control the whole territory not in a proper manner. Hutus considered that Tutsis had been treating Hutus as inferiors during the previous decades so they decided to take revenge. Many Tutsis had to leave Rwanda to become refugees in Burundi, a geographically similar country to Rwanda.

But on November of 1959, a group of Tutsis attacked the Hutu sub-chief Dominique Mbonyumutwa. When they learnt of such attack, Hutu activists started killing Tutsis supporters as a response, provoking the Rwandan Revolution. The Belgians immediately called for elections resulting on a Hutu majority and their corresponding republic, announcing Rwanda’s independence and removing the monarchy. In 1973, a coup took place and brought the Hutu President Juvénal Habyarimana<sup>12</sup> to power. That was the first independence case in the history of Africa that involves dismissing a native king.

## ***2.6 The Arusha Agreements and Assassination of the Rwandan President***

From 1960’s up until the ‘90s, Tutsis had fled the country, exiling in neighbour countries such as Burundi<sup>13</sup> and trying to unsuccessfully attack Rwanda. However, while being refugees, Tutsis had already started planning an invasion of Rwanda and had even created a new military group called the Rwandan Patriotic Front (hereinafter, the “**RPF**”). In particular, a group of approximately 500 exiled Tutsis in Uganda who had served as militaries in a Ugandan war secretly planned a military invasion of Rwanda. However, this invasion didn’t go as planned since France deployed military forces to help the Rwandan army repel this mission and to kill the leader of this operation<sup>14 15</sup>. The invading troops retired to the mountains and, under the supervision of their new leader, Paul Kagame, re-organised their tactics, recruited more Tutsi population and started a war in 1991, which was thought to have ceased by the beginning of crucial negotiations between the RPF and the Rwandan Government. Nevertheless, the Hutus had started killing Tutsis settled in Rwanda causing putting an end to the previous negotiations and provoking a bigger attack. Notwithstanding the above, the negotiations were eventually resumed and concluded in the adoption of several agreements in 1992.

It is important to become aware of the psychological part of it all, which contributed to spread fear on both parties, Hutus and Tutsis. Tutsis were watching “their” lands and government from the other side of the border, overthrown, while Hutus were handling the Rwandan

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<sup>12</sup> Second President of Rwanda, serving from 1973 until 1994.

<sup>13</sup> PRUNIER, G. (1995), *The Rwandan Crisis: History of a Genocide*, Columbia University Press.

<sup>14</sup> Fred Rwigyema was the founder of the Rwandan Patriotic Front.

<sup>15</sup> MUGABE, F. (2014), “Was Rwigyema assassinated?” *Daily Monitor*.

government but living with the constant fear of being killed and dismissed by the remaining Tutsis in Rwanda, as well as by all those who had fled the country.

With the participation of the UN (for this matter, *vid.* “Intervention of the UN”), all parties decided to attend a meeting in Rwanda to discuss the situation and to reach a deal that could benefit all parties. The meeting took place in Arusha with the Rwandan President, the Burundi President and important members of the RPF and came to an agreement written in the so-called ‘Arusha Agreements’. But when the Rwandan President was in his flight back home, the plane was shot down and crashed against the presidential palace. The President of Rwanda and the President of Burundi died on April 6<sup>th</sup> of 1994. Since then, many speculations have been made on who was involved in this action. Many argue that FPR had already planned it, even prior to the Arusha Agreements. Many others argue that Hutus Extremists were the brains behind the attack. However, there are no certain facts to prove neither of these speculations.

Notwithstanding the adoption of the agreements in 1992, the Rwandan army and some of its senior government officials spread throughout Rwanda the thought that Tutsis were traitors, promoting also fear of Tutsis and even accusing their own president of negotiating with such “traitors”. These officials, amongst many Hutus civilians, assassinated 300 Tutsis, which caused the RPF to resume their military moves.

### ***2.7 The Beginning of the Genocide***

The genocide began the day after the Rwandan President was murdered, which proves that the genocide was already planned and was neither incidental nor improvised. It started in a very well organised way and, nowadays, no one takes responsibility for it. Nevertheless, gossiping tongues say the brain behind the genocide was the President’s wife, sister of Rwandan Government’s general, and both members of the Hutu Power. They decided to initiate the killing plan.

However, the primary evidence of the plan being already in process was the warning given by the Canadian general to the Secretary-General of the United Nations, when he claimed the Arusha Agreements were being constantly violated and that he has witnessing massive purchase of machetes and moving troops, as well as military training operations carried out by the Hutu Power, all of it causing a clear threat to the population’s security and peace.

## **2. GENOCIDE**

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### ***3.1 The Term “Genocide”***

Before entering into describing the days in which the massacres happened, it is important to define the limits of the term “*Genocide*”. Winston Churchill referred to genocide as “the

crime without a name”<sup>16</sup>. Since then, a huge variety of authors have tried to determine the meanings of this word and its elements. As William Schabas once said, genocide is the persecution of ethnic, national and religious minorities; therefore it involves crimes against the person, including murder. However, genocide escaped many times prosecution because “*it was virtually always committed at the behest and with the complicity of those in power*”<sup>17</sup>. For instance, Adolf Hitler carried out a genocide but escaped prosecution and justice since the genocide was carried out as an aim of a new political system arising in Germany.

Nonetheless, in 1948 the General Assembly of the United Nations adopted the Convention on the Prevention and Punishment of the Crime of Genocide. In article II, the term “Genocide” was firstly introduced to the UN:

*“In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*

- (a) Killing members of the group;*
- (b) Causing serious bodily or mental harm to members of the group;*
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- (d) Imposing measures intended to prevent births within the group;*
- (e) Forcibly transferring children of the group to another group.”*<sup>18</sup>

### **3.2 Strategy**

Kigali<sup>19</sup> was the first place where the killings started. Assailants murdered those targeted individuals and went door-to-door killing Tutsi and those Hutu opposed to Habyarimana. Although some authors claim that the authorities didn’t directly participate but only facilitate the genocide, such as Alison Desforges, administrative officials did give orders to catch Tutsis trying to flee the country and those who were hiding. They gave false information through radio and public meetings to locals, convincing Hutus that their Tutsi neighbours “*were dangerous agents of the RPF who had to be eliminated*”<sup>20</sup> and then justifying attacking Tutsis as a way of self-defense.

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<sup>16</sup> KUPER, L. (1981), “Genocide, Its Political Use in the Twentieth Century”, *New Haven: Yale University Press*, p. 12.

<sup>17</sup> SCHABAS, W. A. (2009), *Genocide in International Law: The Crimes of Crimes*, Cambridge University Press, p. 14.

<sup>18</sup> Convention on the Prevention and Punishment of the Crime of Genocide. Adopted by the General Assembly of the United Nations on 9 December 1948, available at: <https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>

<sup>19</sup> Kigali has now a Genocide Memorial. More information available at: <https://www.kgm.rw/>

<sup>20</sup> DESFORGES, A. (1999), *Leave None to Tell the Story: Genocide in Rwanda*, p. 13.

Most of the people caught by Hutus extremists were brought together in government-offices, schools, churches or others, where they would be jointly massacred. The authorities then would give orders to the militia and citizens to bring to the officials those who were considered suspicious to be put under investigation, as they noticed that the massacre was not only being carried out towards enemies but also against citizens that weren't and hadn't had taken part in this conflict.

On May, the authorities then gave the order to track down all the last surviving Tutsi who had been hiding during the last month, killing also all those people who had witnessed the murders, so that they wouldn't be able to testify about it.

For a hundred days, there was a lot of blood shed. It wasn't genocide like the German holocaust, as in there wasn't a planning or concentration camps, but it existed a specific order to kill. There were lists created during the past months that would specify where every Tutsi lived and those lists would be handed to the militia. There was a rapid escalation of violence and the killing was carried out even against those who shouldn't have been considered participants of the sides.

### ***3.3 Ending of the Genocide***

The RPF defeated the interim government and its army and stopped the genocide<sup>21</sup>, killing also many unarmed civilians, both as a self-defence mechanism and as a voluntary mechanism. Many of these unarmed civilians were participants of the genocide. However, many others were just woman and children who were tricked and who where told that they would receive food or be transported to a safer place. The RPF managed to kill both political and military leaders as well as their family members.

## **4. THE VICTIMS**

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There is still no determined death toll<sup>22</sup>. However, what has been proved is the fact that the killing rate was so quick that it only took two to three weeks to get to one of the highest numbers of killings in contemporary genocides. The reason of this effectiveness was that there was no strong force that could avoid and stop this huge massacre. Even UNAMIR couldn't use force but only as a self-defence mechanism, by orders of the Secretary General.

Thus, the only way to establish a fair estimated death toll has been to compare the last census prior to the genocide with a census made in 2002, resulting in an estimated amount of 800,00

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<sup>21</sup> BEAUCHAMP, Z. (2014), "Rwanda's genocide – what happened, why it happened, and how it still matters" *Vox*.

<sup>22</sup> VERPOORTEN, M. (2005), "The Death Toll of the Rwandan Genocide: A Detailed Analysis for Gikongoro Providence" *Cairn International Edition*.



Rwandans killed in approximately 3 months<sup>23</sup>. Many Rwandan women were also raped and sexually tortured as a way of spreading fear.

## 5. UNITED NATIONS INTERVENTION

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### 5.1 UNAMIR

Since October 1993, the United Nations (hereinafter, the “UN”) had intervened in Rwanda through the “*United Nations Assistance Mission for Rwanda*” (hereinafter, the “UNAMIR”). The main aim of UNAMIR was to promote the implementation of the Arusha Agreements, under the orders of commander Roméo Dallaire<sup>24</sup>:

*“UNAMIR aimed to ensure compliance with the Arusha Peace Accords of 1993, which sought to end two and a half years of civil war between the forces of the president of Rwanda, Juvénal Habyarimana, and the rebel and Tutsi Rwandan Patriotic Front (RPF), led by the current head of state, Paul Kagame.*

*The pact stipulated a unity government between Hutus and Tutsis, but the violent rejection of Hutu radicals turned the consensus into a house of cards that could collapse at any moment.”* (Translated version)<sup>25</sup>

Roméo Dallaire was becoming aware of the secret weapons and the recruitment, which was a clear breach of the Arusha Agreements. But the President Habyarimana was murdered and, as Roméo Dallaire recalls, “*At that time I was in my residence when I heard the ‘boom’ of the plane impact*”<sup>26</sup>. In January 3<sup>rd</sup>, 1994 Roméo Dallaire sent a fax to the UN informing about the clear threat of an imminent massacre. His plan was to start making raids in the weapons depots in order to destabilize the planning of the extremists, unmasking them and forcing another round of negotiations. However, the western powers were afraid of taking part in such a conflict, since there is no permanent military force in the UN, so a military force would imply the contribution of other member states in the cause, according to article 43.1 of the UN Charter:

*“Article 43.1 All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or*

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<sup>23</sup> (Anonymus) (2001), “Rwanda: How the Genocide happened”, *BBC NEWS*.

<sup>24</sup> “Roméo Antonius Dallaire is a Canadian humanitarian, autor and retired senator and general. Dallaire served as Force Commander of UNAMIR, the ill-fated United Nations peacekeeping force for Rwanda beteen 1993 and 1994, and attempted to stop the genocide that was being waged by Hutu extremists against the Tutsi people and Hutu moderates.” Available at: [https://en.wikipedia.org/wiki/Rom%C3%A9o\\_Dallaire](https://en.wikipedia.org/wiki/Rom%C3%A9o_Dallaire)

<sup>25</sup> ALONSO, P. (2019), “Roméo Dallaire, el héroe trágico que no pudo impedir el genocidio de Ruanda”, *La Vanguardia*.

<sup>26</sup> *Ídem*.

*agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.”<sup>27</sup>*

As a response to the fax, the UN stated that Roméo Dallaire’s mandate forbade him to carry out such plan, and the Secretary General Boutros-Boutros Ghali<sup>28</sup> had no plan in changing Dallaire’s mandate.

The UN intervention as a peacekeeping force became unsuccessful because of their omission when this peace was starting to be breached. Even Roméo Dallaire stated that the genocide could have maybe been stopped with a new round of negotiations. However, he also recognised that, to be able to do such thing, the UN would have to send military forces, a different mandate and real compromise, three elements that lacked in reality, as the Security Council is in charge of providing these guarantees, according to Article 39 of the UN Charter and refused to do so:

*“Article 39. The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”<sup>29</sup>*

Surprisingly and because of the considerations above, the United Nations didn’t want to take risks. They only took foreigners out of Rwanda but left natives there, hopeless.

## ***5.2 Establishment of the International Criminal Tribunal for Rwanda***

Therefore, the UN intervention became a failure and only served well to the cause when, after the genocide, they established the International Criminal Tribunal for Rwanda (hereinafter, the “ICTR”).

The United Nations Security Council adopted in 8<sup>th</sup> November 1994 the Resolution 955 in order to comply with Chapter VII of the United Nations Charter and address the serious violations of humanitarian law that were taking place. Hence the United Nations established the ICTR. But, probably, the main reason of this Tribunal was to cooperate and strengthen Rwanda’s judicial system, which wasn’t able to address all those violations with its own system.

It is important to note that, at the time, Rwanda didn’t show any gratitude to the establishment of the ICTR. For instance, the Resolution 955 was adopted against Rwanda’s will, who didn’t vote in favour. Rwanda wasn’t questioning whether the UN had to intervene or not but the

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<sup>27</sup> UN Charter – Chapter VII: “Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression”, available at: <https://www.un.org/en/sections/un-charter/chapter-vii/index.html>

<sup>28</sup> Boutros-boutros Galhi (from Egypt) served as the UN Secretary General from 1992 to 1996.

<sup>29</sup> UN Charter – Chapter VII: “Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression”, available at: <https://www.un.org/en/sections/un-charter/chapter-vii/index.html>

ways by which the ICTR was going to act. In the 3453<sup>rd</sup> Meeting held on 8<sup>th</sup> November 1994 between Rwanda and the Security Council, Rwanda intervened and recalled the reason why it had requested the participation of an international tribunal:

*“(...) The Rwandese Government wanted to involve the international community, which was also harmed by the genocide and by the grave and massive violations of international humanitarian law, and it wanted to enhance the exemplary nature of a justice that would be seen to be completely neutral and fair.*

*(...) Thirdly, the Rwandese Government requested and firmly supports the establishment of an international tribunal to make it easier to get at those criminals who have found refuge in foreign countries.*

*(...) The Tribunal will help national reconciliation and the construction of a new society based on social justice and respect for the fundamental rights of the human person, all of which will be possible only if those responsible for the Rwandese tragedy are brought to justice.”<sup>30</sup>*

But then, Rwanda also started numbering all those elements its government was still unsatisfied with:

*“Firstly, my delegation regards the dates set for the *ratione temporis* competence of the International Tribunal for Rwanda, from 1 January 1994 to 31 December 1994 as inadequate. (...) The international community (...) was well aware of these massacres and cannot claim that it became cognizant of the situation only in the wake of the tragedy of April 1994. (...) An international tribunal which refuses to consider the causes of the genocide in Rwanda and its planning, and that refuses to consider the pilot projects that preceded the major genocide of April 1994, cannot be of any use to Rwanda (...).*

*(...) Thirdly, (...) the ICTR intends to disperse its energy by prosecuting crimes that come under the jurisdiction of internal tribunals. Furthermore, nothing in the draft resolution and statute indicates the order of priority for crimes considered by the Tribunal. (...)*

*Fourthly, certain countries (...) took a very active part in the civil war in Rwanda. My Government hopes that everyone will understand its concern at seeing those countries propose candidates for judges and participate in their election.*

*The fifth reason is that my delegation finds it hard to accept that the draft statute of the ICTR proposes that those condemned be imprisoned outside Rwanda and that*

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<sup>30</sup> “3453rd Meeting, 8 November 1994” *United Nations Security Council*, p. 14, available at: <https://undocs.org/S/PV.3453>

*those countries be given the authority to reach decisions about the detainees, This is for the ICTR or at least for the Rwandese people to decide. (...)*

*The sixth reason is that the ICTR as designed in the resolution establishes a disparity in sentences since it rules out capital punishment, which is nevertheless provided for in the Rwandese penal code. Since it is foreseeable that the Tribunal will be dealing with suspects who devised, planned and organized the genocide, these may escape capital punishment whereas those who simply carried out their plans would be subjected to the harshness of this sentence. The situation is not conducive to national reconciliation in Rwanda. (...).”<sup>31</sup>*

### **5.3 Last Trial**

The ICTR was established in 1994 in order to address the huge number of accused that were waiting to hear their trial and was scheduled to end by the end of 2014<sup>32</sup>. During this period, the ICTR has indicted 93 individuals “whom it considered responsible for serious violations of international humanitarian law”<sup>33</sup>. Its last judgement took place on December 20<sup>th</sup>, 2012, in Augustin Ndirakobuca’s trial. Augustin Ndirakobuca was convicted for committing direct and public incitement to genocide based on a speech delivered on the Cyanika-Gisa road in Nyamyumba Commune. He was sentenced to 35 years of imprisonment, although his sentence was further reduced because the Appeals Chamber could not sustain a rape conviction that was made by the ICTR.<sup>34</sup>

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<sup>31</sup> “3453rd Meeting, 8 November 1994” *United Nations Security Council*, p. 15 available at: <https://undocs.org/S/PV.3453>

<sup>32</sup> “UN genocide tribunal in Rwanda swears-in judges selected to finish its work” *UN News Centre*, May 7th, 2012 available at: <http://www.un.org/apps/news/story.asp?NewsID=41938>

<sup>33</sup> <http://unictr.irmct.org/en/tribunal>

<sup>34</sup> <http://www.irmct.org/en/cases/mict-12-29>

## 6. GACACA COURTS

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### 6.1 Re-establishing a Traditional Community Court System

The Gacaca Courts were a traditional community court system that wasn't functioning up until 1994. Although they even tried criminal cases in the past, during the colonization period the Belgian military occupation diminished these courts by establishing a new Western-style judicial system throughout Rwanda and Burundi. This Western system tried serious political and commercial offences as well as homicidal crimes while Gacaca Courts ended up by only being used in small villages for resolving domestic conflicts and petty crimes.<sup>35</sup> However, due to the large number of accused, the UN and Rwandan National System weren't enough to judge all perpetrators in a timely manner. Approximately 120.000 people were brought to the authorities, leading them to prisons with a holding capacity of 45.000 inmates. If we take into account the number of prisons in Rwanda (19), we can easily interpret that Rwanda's prisons were operating at over 200% of their capacity<sup>36</sup>. Rwanda was in need of an imminent cure, and needed to seek justice. Therefore, the new Rwandan Government decided to re-establish these Courts.

The word “*Gacaca*” means “a grassy place”, which “*suggests such courts were convened outdoors in the middle of the village*”<sup>37</sup>. Gacaca Courts were under the leadership of the so-called *Inyangamugayo*, an African word that refers to people who don't accept dishonour<sup>38</sup>.

### 6.2 Reformulation

As said, Gacaca Courts needed to be reformulated in order to take action during the post-genocide period. For that matter, several organic laws from 1996 to 2004 were enacted, which conferred them enough competence to prosecute acts of genocide against humanity committed in Rwanda from October 1<sup>st</sup> 1990 until December 31<sup>st</sup>, 1994.

*“The purpose of this organic law is the organization of criminal proceedings against persons who are accused of having since 1 October 1990, committed acts set out and sanctioned under the Penal Code and which constitute:*

*a) Either the crime of genocide or crimes against humanity as defined in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, in the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and its additional protocols, as well as in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and*

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<sup>35</sup> <http://gacaca.rw/about/history-3/>

<sup>36</sup> NYSETH BREHM, H.; UGGEN, C.; and GANASABO, J. (2014), “*Genocide, Justice and Rwanda's Gacaca Courts*”. *Journal of Contemporary Criminal Justice*, Vol. 30, p. 335.

<sup>37</sup> HANKEL, G. (2013), “Gacaca Courts”, *Oxford Public International Law*.

<sup>38</sup> *Idem*.

*Crimes Against Humanity of 26 November 1968, the three of which were ratified by Rwanda; or*

*b) Offences set out in the Penal Code which the Public Prosecution Department alleges or the defendant admits were committed in connection with the events surrounding the genocide and crimes against humanity.”<sup>39</sup>*

### **6.3 Functioning**

Firstly, the Rwandan Government promulgated the Organic Law N° 08/06 of 30/8/1996 (hereinafter, “**Organic Law of 1996**”), which stipulates the categories that suspects are to be assigned throughout its Article 2. These are the following:

#### **“Category 1.**

- a) Persons whose criminal acts or whose acts of criminal participation place them among the planners, organizers, instigators, supervisors and leaders of the crime of genocide or of a crime against humanity.*
- b) Persons who acted in positions of authority at the national, prefectural, communal, sector or cell level, or in a political party, the or fostered such crimes.*
- c) Notorious murderers who by virtue of the zeal or excessive malice with which they committed atrocities, distinguished themselves in their areas of residence or where they passed.*
- d) Persons who committed acts of sexual torture.*

#### **Category 2:**

*Persons whose criminal acts or whose acts of criminal participation place them among perpetrators, conspirators or accomplices of intentional homicide or of serious assault against the person causing death.*

#### **Category 3:**

*Persons whose criminal acts or whose acts of criminal participation make them guilty of other serious assaults against the person.*

#### **Category 4:**

*Persons who committed offences against property.”*

After the Organic Law of 1996, the Rwandan Government adopted the Organic Law N° 40/2000 of January 2001 (hereinafter, the “**Gacaca Courts Law**”), by which Gacaca Courts were finally established. The main goals assigned to Gacaca Courts, amongst many others, were to reveal the truth about the Genocide and to strengthen reconciliation among Rwandans. One of the main regulations the Gacaca Courts Law managed to establish was the

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<sup>39</sup> Article 1 of Rwandan Organic Law N° 08/06 of August 30th, 1996 on the Organization of Prosecution for Offences constituting the Crime of Genocide or Crimes against the Humanity committed since October 1, 1990.

classification of sentences depending on the categories, as well as the advantages of pleading guilty in every case. However, the Organic Law N° 16/2004 of 19 June, 2004 modified this classification, eliminating Category 4 and establishing what follows:

Category	Circumstances	Sentences
<b>1st</b>	1. For planners, organisers, instigators and ringleaders of the Genocide / for individuals who were in administrative organs and committed these offences or encouraged others to commit them / murderers / individuals who committed acts of torture or rape / individuals who committed dehumanising acts on a dead body. - Not pleading guilty - Guilty plea not accepted	Capital punishment or life imprisonment + perpetual and total loss of all civil rights.
	- Those who pleaded guilty	Imprisonment of 25 years to 30 years as well as perpetual and total loss of all civil rights.
<b>2nd</b>	1. Perpetrators, co-perpetrators and accomplices of murder or acts of serious violence, causing death / with the intention to kill but not attaining this objective - Not pleading guilty - Guilty plea not accepted	Imprisonment of 25 years to 30 years as well as permanent deprivation of the right to vote, to eligibility, to be an expert, witness in the rulings and trials except in case of assisting minor investigations, to possess and carry firearms; to serve in the armed forces.
	- Pleading guilty after being prosecuted	Imprisonment of 12 to 15 years as well as permanent deprivation of the right to vote, to eligibility, to be an expert, witness in the rulings and trials except in case of assisting minor investigations, to possess and carry firearms; to serve in the armed forces.
	- Pleading guilty before being prosecuted	Imprisonment of 7 to 12 years as well as permanent deprivation of the right to vote, to eligibility, to be an expert, witness in the rulings and trials except in case of assisting minor investigations, to possess and carry firearms; to serve in the armed forces.
	2. Individuals who committed or aided to commit other offences, without the intention to kill. - Not pleading guilty - Guilty plea not accepted	Imprisonment of 5 to 7 years.
	- Pleading guilty after being prosecuted	Imprisonment from 3 to 5 years.
	- Pleading guilty before being prosecuted	Imprisonment from 1 to 3 years.
<b>3rd</b>	Causing damage to property	Civil compensation

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As for the organization of Gacaca Courts foreseen in the previous law, each and every one of them was composed of a General Assembly, a Bench of Judges and a Coordinating Committee. The General Assembly holds monthly reunions and meets extraordinarily if this

<sup>40</sup> (Anonymus) (2012) “National Service of Gacaca Courts – Kigali, June 2012” p. 71, Adapted version of Table 8, available at:

[http://cnlg.gov.rw/fileadmin/templates/documents/GACACA\\_COURTS\\_IN\\_RWANDA.pdf](http://cnlg.gov.rw/fileadmin/templates/documents/GACACA_COURTS_IN_RWANDA.pdf)



is necessary for the proper functioning of the courts. These meetings focus on the evaluation of the activities of the Bench and the Coordination Committee. The members of the Bench (known as *Inyangamugayo*, which means “Judges”) are elected by the General Assembly of each cell. It is noteworthy that this is one of the main and most characterized differences in the functioning of this traditional system, in comparison with the Western system. Regarding this, the role of a judge can be assigned to members of the community who do not have previous legal studies, although they must meet certain requirements: they have to be at least 21 years old; they cannot have criminal backgrounds; they cannot be former officials of the government or political leaders. But, probably, the most important requirement of them all is they have to be committed to justice, truth and have a spirit of sharing speech which is ensured by the obligation of taking an oath before each trial and “*in the name of God Almighty, solemnly swear to the Nation to honestly fulfil the mission entrusted (...) by complying with the law; to always be guided by the spirit of impartiality and search for the truth, and to make justice triumph*”.

Many could question how a member of the community who has been elected judge can be impartial when resolving a murder case. A judge for this matter cannot seat and judge a person that he/she or his/her spouse are directly related to up to the 2<sup>nd</sup> degree, nor seat and judge a person with whom they have or have had a dispute or enmity. Nor can they seat and judge individuals with whom they have or have had friendly relations<sup>41</sup>.

Another objection could be the fact that judges elected after the genocide have no training at all and that could question their capacity for the task. However, they did receive some training prior to the trials: during 10 days, judges, students of law and human rights activists trained those future judges. These trainings were organized as debates, discussing the objectives of the Gacaca Courts, the code of ethics of the judges, the functioning of these Courts, amongst others<sup>42</sup>.

Gacaca Courts are held outdoors so as to make public their hearing<sup>43</sup>. Each trial personnel have a general assembly, a bench of 19 judges, a president and the Coordination Committee. As to the judges, they seat in a bench wearing robes with the Rwandan flag, in a sense of unity and moving forward for the sake of the country.

#### **6.4 Competence**

There is a Gacaca Court for every Cell, Sector, District or Town and Province or Kigali City. Not every Gacaca Court has the same jurisdiction. Since crimes are classified into four

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<sup>41</sup> [http://cnlg.gov.rw/fileadmin/templates/documents/GACACA\\_COURTS\\_IN\\_RWANDA.pdf](http://cnlg.gov.rw/fileadmin/templates/documents/GACACA_COURTS_IN_RWANDA.pdf)  
p. 36.

<sup>42</sup> [http://cnlg.gov.rw/fileadmin/templates/documents/GACACA\\_COURTS\\_IN\\_RWANDA.pdf](http://cnlg.gov.rw/fileadmin/templates/documents/GACACA_COURTS_IN_RWANDA.pdf)

<sup>43</sup> Article 21 of the Rwandan Organic Law N° 16/2004: “*Hearings for Gacaca Courts are public, except when there is a hearing in camera decided by the Gacaca Court, or on the request of any interested person and decided in a pronounced judgement for reasons of public order or good morals.*”



categories, each Gacaca Court is entitled to resolve cases of only certain categories. Hence, the Gacaca Court of the Cell can only deal with crimes of the fourth category; the Gacaca Court of the Sector can only deal crimes of the third category; the Gacaca Court of the District can only deal with crimes of the second category; and the Gacaca Court of the Province or Kigali City can deal judgements rendered at the first category.

### ***6.5 Guilty Plea, Confession, Repentance and Apologies***

In the first accusations, only some of the detainees pleaded guilty, thus reducing their respective sentences. This was due to the silence among the detainees and that no one dared to take the first step towards the revelation of truth. It was for this reason that the Ministry of Justice of Rwanda organized an awareness campaign about the process of pleading guilty, making public the advantages that this process entailed to the detainees.<sup>44</sup> This sensitisation took place in various Rwandan prisons, causing, for instance, a committee of prisoners known as “*Urumi*”, by which prisoners plead guilty for the crimes committed.<sup>45</sup>

The guilty plea procedure permits victims and perpetrators to live together again, forgiving all the acts committed. It motivates perpetrators to seek forgiveness from the victim’s family members<sup>46</sup>. This happens so as Gacaca Courts bring to trial two main elements during a reconciliation process: on one hand, the truth; on the other hand, repentance. As to the truth, during the guilty plea confessions, perpetrators are given the chance to confess all acts committed, enabling victims and family members of victims to get to know the total truth about what happened during the hundred days of terror. Knowing the truth, victims and family members of the victims can start an acceptance process and with the perpetrator’s repentance, decide whether to individually accept and forgive the perpetrator or not.

## **7. TOWARDS RECONCILIATION**

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### ***7.1 Defining “Reconciliation”***

Reconciliation can be defined as a “*mutual acceptance by groups of each other*”<sup>47</sup>. In this case, reconciliation would mean mutual acceptance by members of hostile groups and their victims.

Reconciliation, in general, is a “*complex set of processes that involve building or rebuilding relationships*” and it can refer to any level of reconciliation. It can be referring to individual reconciliation, in relation to both victims and perpetrators reconciliation with their own pasts

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<sup>44</sup> [http://cnlg.gov.rw/fileadmin/templates/documents/GACACA\\_COURTS\\_IN\\_RWANDA.pdf](http://cnlg.gov.rw/fileadmin/templates/documents/GACACA_COURTS_IN_RWANDA.pdf) p. 25.

<sup>45</sup> [http://cnlg.gov.rw/fileadmin/templates/documents/GACACA\\_COURTS\\_IN\\_RWANDA.pdf](http://cnlg.gov.rw/fileadmin/templates/documents/GACACA_COURTS_IN_RWANDA.pdf)  
p. 32.

<sup>46</sup> KHALEELI, H. (2010), “Rwanda’s community courts: a unique experiment in justice.” *The Guardian*.

<sup>47</sup> STAUB, E. (2006), “Running Head: reconciliation after genocide” *University of Massachusetts at Amherst*.

and experiences; it can be interpersonal, in relation to reconciliation between victims and perpetrators; it can be socio-political, in relation to reconciliation between different groups and tribes; and it can be institutional, referring to institutions and civilians.

Throughout the following pages, Reconciliation will be considered both as a national aim to achieve unity while it will also be considered as a personal process that enables neighbours to live together, leaving behind the acts committed in the past and the differences marked by history. However, it is important to note that reconciliation cannot be considered as neither forgetting the past, nor the victims and perpetrators.

## ***7.2 Reconciliation in Rwanda***

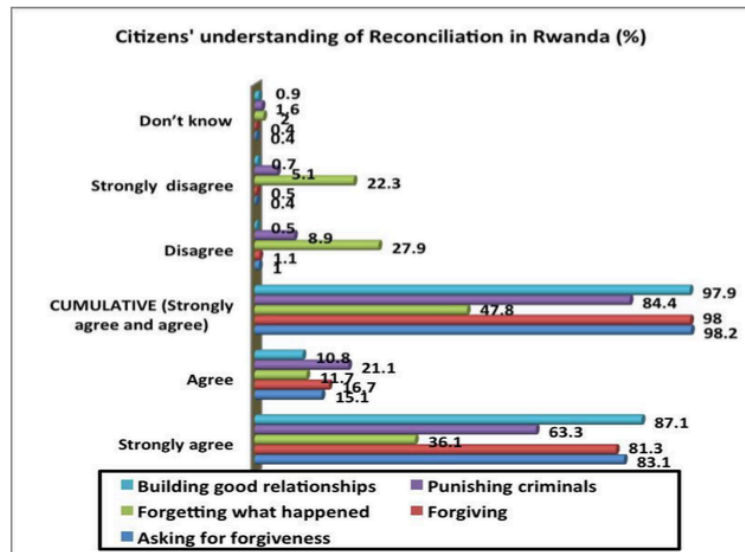
### **a) National Reconciliation:**

In many occasions, history has shown that reconciliation and punishment are often contradictory, since reconciliation aims to seek forgiveness, while punishment is often related to vengeance. However, Rwanda has proved that they are both compatible, since punishment is also necessary to grant a certain justice that can enable even forgiveness, which should be the final goal in a post-genocide scenario, to promote a bigger cure in a hurt civilisation. Therefore, punishment can be a tool, not a final goal, inside the configuration of a judicial system implanted as a Transitional Justice mechanism to move forward from a nation that has suffered serious mass gross rights violations.

From a realistic point of view, it is also necessary to clear the air and set the record straight: reconciliation cannot be possible without justice, since justice must take an important role for two reasons: first of all, for satisfying the victim's legitimate need for see how justice is being done; second of all, for giving a national message that acts of genocide transcend in their gravity and must therefore be punished, as well as a message of preventing such acts of being committed again. Accordingly, justice *must* befriend with reconciliation. Therefore, punishment when deemed necessary must be befriended with reconciliation.

Since the genocide in 1994, Rwanda has established a Transitional Justice whose principal aim is reconciliation. A proof of this can not only be seen in the Gacaca Courts but in many other educational and political newly implemented mechanisms that seek promoting reconciliation between all tribes, as well as new measures to diminish day by day the differences that were set between the tribes during long decades. Notwithstanding the above, national reconciliation and personal reconciliation are not the same, since personal reconciliation enables not only the society as a whole to move forward, but also to the concrete individual. Although they are not the same, Transitional Justice promoting national reconciliation can help achieving personal reconciliation. And one of the biggest tools of the Rwandan Government to promote national reconciliation was resetting the Gacaca Courts and their new competence to resolving criminal cases.

A barometer published by the National Unity and Reconciliation Commission of Rwanda<sup>48</sup> has proved reconciliation mechanisms, Rwandans do understand and agree with achieving reconciliation:



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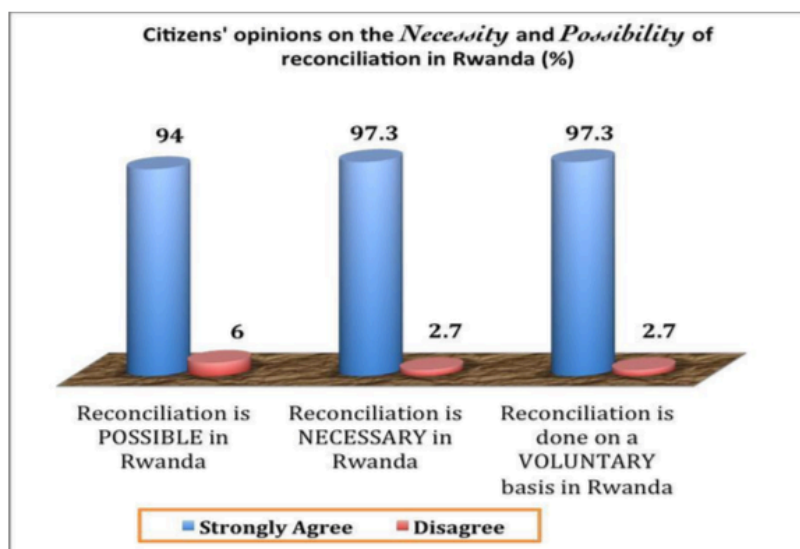
As the previous figure manifests, most of Rwandans conceive reconciliation as “*Asking for forgiveness*” and “*Forgiving*”. Therefore, Gacaca Courts, amongst others, have been useful because they have spread the thought and common believe that forgiveness is as necessary as justice in order to heal.

b) Inter-personal reconciliation:

Many could argue that Rwandans are being obliged to achieve reconciliation, since politics have been aimed at attaining such objective. However, this assumption cannot be considered as truthful, since personal reconciliation cannot be possible when obliged. However, politics and judicial mechanisms, such as Gacaca Courts, have proposed a different healing process that satisfies better everybody’s needs. About this, the National Unity and Reconciliation Commission of the Republic of Rwanda published also a figure in 2015, showing citizen’s opinions on the need of considering and achieving reconciliation:

<sup>48</sup> The National Unity and Reconciliation Commission of the Republic of Rwanda promotes “*Unity, Reconciliation, and social cohesion among Rwandans and build a country in which everyone has equal rights and contributing to good governance*”. More information available at: <http://www.nurc.gov.rw/index.php?id=84>

<sup>49</sup> Rwanda Reconciliation Barometer, of the National Unity and Reconciliation Commission of the Republic of Rwanda, 2015, p. 24, Figure 6.



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In order to understand inter-personal reconciliation, I decided to meet a journalist who was recently in Rwanda, Pedro-Javier Armengou Freixa, who in Rwanda met with Alice Mukaurinda and Emmanuel Ndayisaba, an example of what personal reconciliation looks like in Rwanda. Alice was mutilated during the genocide and her children were killed. Emmanuele was the one who mutilated her but, at the time, justice did not knock on his door. However, he had regrets to the point that one day, at a mass, he found himself unable to speak and decided to surrender in 1996. He was tried by a Gacaca Court, and pleaded guilty, subsequently entering prison. During his time in prison, he began to draw up a list of the people he believed and remembered to have killed. Some of the names he knew, but he remembered others with adjectives of physical appearance or places where the killing took place. He wrote 21 names, among which was Alice's, believing that she had died. Years passed, Emmanuele served his sentence and left prison. He began to get involved in reconciliation policies and processes and found Alice in one of these. When he saw her, he was not able to reveal that he was the one who had maimed her and that he had participated in the death of her children, although not directly. They ended up working together on a house construction project, without Alice knowing the truth. For 3 years, Emmanuele gained Alice's trust and forged a great friendship. But Emmanuele decided to put an end to the remorse and one day he fell on his knees before Alice, revealing the truth. With lots of outside help and time, Alice has been able to forgive Emmanuele little by little, to the point where they were sitting two inches away in PJ Armengou's interview. She affirmed that she was in need of forgiving in order to get rid of hatred and pain, although it is a laborious forgiveness that requires the acceptance of each day.

This is one of many examples of what inter-personal reconciliation looks like nowadays in Rwanda. Thousands of Rwandans are forgiving their neighbours not only to enhance a national unity, but also for their own reasons as individuals.

<sup>50</sup> Rwanda Reconciliation Barometer, of the National Unity and Reconciliation Commission of the Republic of Rwanda, 2015, p. 26, Figure 8.

## 8. CONCLUSIONS

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*“If we all together support Gacaca Courts, we’ll have shown the love we have for our country and Rwandans. Justice that reconciles Rwandans will be a fertile ground for unity and a foundation for development”*. Paul Kagame, 2002.<sup>51</sup>

The hypothesis with which this research was introduced stated that reconciliation has a key role in the healing process in a post-genocide scenario and can be even more overriding than punishment *per se*. Studying Gacaca Courts’ functioning, having the chance to interview the journalist Pedro-Javier Armengou Freixa and going through the summaries provided by the National Unity and Reconciliation Commission of the Republic of Rwanda, the hypothesis has been validated, since the barometers previously shown display Rwandans’ will to forgive and ask for forgiveness.

Indeed, a Transitional Justice system driven by the mission of achieving reconciliation throughout a nation is wiser than simply enforcing a system that punishes perpetrators with the intention to promote justice and prevention, such as many Western systems. And probably the most conspicuous evidence of it are the Gacaca Courts, a traditional community court system that needed the adoption of organic laws that would allow them a possible adaptation to a Transitional Justice system. Gacaca Courts were re-established thanks to the adoption of a very idiosyncratic law that not only dealt out punishment, but also allowed perpetrators to seek forgiveness from the victims and the community<sup>52</sup>. Once this forgiveness is duly granted, the community can accept back the accused and his sentence is reduced.

Through the Gacaca Courts system formula, three levels of reconciliation can be achieved. The most important one may be inter-personal reconciliation, since it necessarily is the previous step for accomplishing other reconciliation surfaces. Inter-personal reconciliation can be possible with Gacaca Courts since the perpetrator can directly ask for forgiveness to the victim’s relatives, who must be present during trial. Accordingly, the perpetrator has the feasibility to speak out his truth, which grants also the victims the chance to finally learn the truth about the political reasons of their suffering and what exactly happened to their relatives. When asking for forgiveness, after knowing the truth of the events happened during the hundred days of blood, victims and relatives of the victims can intimately forgive the perpetrator, notwithstanding the Court’s decision.

Inter-personal reconciliation between victims and accused can then permit an individual reconciliation in two different levels: for the accused itself, since when being forgiven a chance to rebuild his life and to forgive himself is being granted; and for the victims, since they are directly being asked to forgive, which introduces a new internal process that may help into their healing and acceptance development, as well as they are seeing justice being

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<sup>51</sup> Speech by Paul Kagame, President of the Republic of Rwanda, launching Gacaca Courts activities on the 19th June 2002.

<sup>52</sup> <https://www.youtube.com/watch?v=LiDea-PNoyw>

made and the perpetrator itself showing remorse, accepting the derivable consequences of confessing.

Lastly, socio-political reconciliation can also be feasible, since tribes are made of individuals, which means that when almost every individual of a tribe accept members of other tribes, it can be considered as an acceptance of the whole tribe, which permits a subsequent coexistence among all<sup>53</sup>. Gacaca Courts also play with symbolisms, since the community elects their own judges for every case, which means that when a judge delivers a judgement, that judgment is also being delivered by the community. Consequently, when a judge accepts the perpetrator's forgiveness and remorse and afterwards reduces his sentence, the community as a whole is also accepting back the perpetrator.

After all, Rwanda's Gacaca Courts have proved to be a successful reconciliation mechanism<sup>54</sup>, since it boosts every single level of reconciliation. Although it doesn't oblige the community members to employ all the tools of these procedures, it does guarantee them and promises a higher likelihood of getting two tribes to reconcile. Thence, structures and institutions can definitely change psychological orientations of their individuals<sup>55</sup> and accompany them towards a more promising unity with all members.

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<sup>53</sup> SEILS, P. (2017), "The Place of Reconciliation in Transitional Justice", *ICTJ Justice Truth Dignity*.

<sup>54</sup> SEAY, L. (2017), "Rwanda's gacaca courts are hailed as a post-genocide success. The reality is more complicated." *The Washington Post*.

<sup>55</sup> ERVIN, S; PEARLMAN, L.A.; GUBIN, A.; ATHANASE, H., (2005), "Healing, reconciliation, forgiving and the prevention of violence after genocide or mass killing: an intervention and its experimental evaluation in Rwanda", *Journal of Social and Clinical Psychology*, Vol. 24, No. 3, p. 301.

## BIBLIOGRAPHY

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### *1. Articles, Books and Reviews*

ALONSO, P. (2019), “Roméo Dallaire, el héroe trágico que no pudo impedir el genocidio de Ruanda”, *La Vanguardia*.

BEAUCHAMP, Z. (2014), “Rwanda’s genocide – what happened, why it happened, and how it still matters” *Vox*.

CHRÉTIEN, J. (2006), *The Great Lakes of Africa: Two Thousand Years of History*, Zone Books.

DESFORGES, A. (1999), *Leave None to Tell the Story: Genocide in Rwanda*.

ERVIN, S; PEARLMAN, L.A.; GUBIN, A.; H. ATHANASE, (2005), “Healing, reconciliation, forgiving and the prevention of violence after genocide or mass killing: an intervention and its experimental evaluation in Rwanda”, *Journal of Social and Clinical Psychology*, Vol. 24, No. 3.

GOUVERITH, P. (1999) *We Wish to Inform You That Tomorrow We Will Be Killed With Our Families: Stories From Rwanda*, Bestselling Backlist.

HANKEL, G. (2013), “Gacaca Courts”, *Oxford Public International Law*.

KHALEELI, H. (2010), “Rwanda’s community courts: a unique experiment in justice.” *The Guardian*.

KUPER, L. (1981), “Genocide, Its Political Use in the Twentieth Century”, *New Haven: Yale University Press*.

LOUIS, W. R. (2006), “Ends of British Imperialism: The Scramble for Empire, Suez, And Deconolonization” *Foreign Affairs*.

MUGABE, F. (2014), “Was Rwigyema assassinated?” *Daily Monitor*.

NYSETH BREHM, H.; UGGEN, C.; AND GANASABO, J. (2014), “*Genocide, Justice and Rwanda’s Gacaca Courts*”. *Journal of Contemporary Criminal Justice*, Vol. 30.

PRUNIER, G. (1995), *The Rwandan Crisis: History of a Genocide*, Columbia University Press.

ROSENBERG, M. (2018), “The Berlin Conference of 1944 – 1885 to Divide Africa”, *ThoughtCo*.

SCHABAS, W. A. (2009), *Genocide in International Law: The Crimes of Crimes*, Cambridge University Press.

SEAY, L. (2017), “Rwanda’s gacaca courts are hailed as a post-genocide success. The reality is more complicated.” *The Washington Post*.

SEILS, P. (2017), “The Place of Reconciliation in Transitional Justice”, *ICTJ Justice Truth Dignity*.

STAUB, E. (2006), “Running Head: reconciliation after genocide” *University of Massachussets at Amherst*.

VERPOORTEN, M. (2005), “The Death Toll of the Rwandan Genocide: A Detailed Analysis for Gikongoro Providence” *Cairn International Edition*.

(Anonymus) (2001), “Rwanda: How the Genocide happened”, *BBC NEWS*.

(Anonymus) (2012) “UN genocide tribunal in Rwanda swears-in judges selected to finish its work” *UN News Centre*.

(Anonymus) (2012) “National Service of Gacaca Courts – Kigali, June 2012”.

## **2. UN Documents and Reports**

Charter of the United Nations, 1945.

Convention on the Prevention and Punishment of the Crime of Genocide. Adopted by the General Assembly of the United Nations on 9 December 1948.

A/61/636 – S/2006/980 of 14 December 2006: “Uniting Our Strengths: Enhancing United Nations Support for the Rule of Law” – Report.

S/2004/616 of 24 August 2004: “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies” – Report.

“3453rd Meeting, 8 November 1994” *United Nations Security Council*.

“3453rd Meeting, 8 November 1994” *United Nations Security Council*.



### **3. Rwandan Legislation**

Organic Law N° 08/06 of August 30<sup>th</sup>, 1996, on the Organization of Prosecution for Offences constituting the Crime of Genocide or Crimes against the Humanity committed since October 1<sup>st</sup>, 1990.

Organic Law N° 16/2004 of June 19<sup>th</sup>, 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.

### **4. Websites**

<https://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/TransitionalJustice.aspx>

<http://www.un.org/en/preventgenocide/rwanda/pdf/bgjustice.pdf>

<https://www.kgm.rw/>

[https://en.wikipedia.org/wiki/Rom%C3%A9o\\_Dallaire](https://en.wikipedia.org/wiki/Rom%C3%A9o_Dallaire)

<http://unictr.irmct.org/en/tribunal>

<http://www.irmct.org/en/cases/mict-12-29>

<http://gacaca.rw/about/history-3/>

<http://www.nurc.gov.rw/index.php?id=84>

### **5. Others**

“*Manifeste des Bahutu*”, available at:

<http://francegenocidetutsi.org/ManifesteDesBahutuLettreEtCommentaires1958.pdf>

Rwanda Reconciliation Barometer, of the National Unity and Reconciliation Commission of the Republic of Rwanda, 2015.

The Berlin Act, available at:

<https://www.sahistory.org.za/archive/general-act-berlin-conference-west-africa-26-february-1885>

Video of Gacaca Courts in Rwanda, available at:

<https://www.youtube.com/watch?v=LiDea-PNoyw>