

# **The impact of Gacaca courts in three Rwandan communities**

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# **DECLARATION**

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## **ABSTRACT**

One of the major issues following the genocide in Rwanda in 1994 was what to do with the huge number of people (around 100 000) accused of crimes during the genocide. Western legal approaches dealt with a handful of such cases at huge expense but the vast majority of the accused languished in prison. The government decided to employ a modified version of Gacaca – the traditional way of dealing with disputes and lower level crimes at community level.

Using a qualitative research methodology and employing focus groups and individual interviews as data collection tools, this research investigate perceptions about the operation of Gacaca in three Rwandan communities, with particular reference to truth, justice, forgiveness and reconciliation.

The research suggests that in the three communities, Gacaca was seen as bringing the truth out into the open and to provide a measure of justice, although limitations were noted in both of these respects. Given the enormity of the genocide crimes, however, there seemed to be little progress in the areas of forgiveness and reconciliation.

## **ACKNOWLEDGEMENTS**

My sincere gratitude extends to Professor Harris our teacher, our big brother and father who throughout our programme has always been there for our education, document exchange, welcome to us who come from far away; the number of hours spent together face to face discussing our work and above. You are a teacher of peace and you practice the peace in your daily life; this should edify your students.

I salute the people of Rwanda wounded but standing up and I applaud their leaders for having set up a purely African court jurisdiction which some experts did not want to believe but that it has proven. Gacaca help to stabilize the country and with the Weathering gradually heal wounds.

Thank you to my family, my wife and children who have always encouraged me to pursue education despite my stressful job away from them and away from South Africa very welcoming country that accepted me to enroll in one of its universities to complete my thesis.

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## **LIST OF ABBREVIATIONS**

AFRC: Armed Forces Revolutionary Council

ASF: Avocats Sans Frontières

CDF: Civil Defense Forces

DRC: Democratic Republic of Congo

FDLR: Front Démocratique de libération du Rwanda (the main Hutu militia operating in the eastern DRC)

ICTR : International Criminal Tribunal for Rwanda

LTRC: Liberia Truth and Reconciliation Commission

NaCSA: National Commission for Social Action

NURC: National Unit and Reconciliation Commission, Rwanda

PFR : Prison Fellowship Rwanda

RPF: Rwanda Patriotic Front

RTF: Reparations Trust Fund(s)

SNJG: Simplified Guide to Trial Procedures

TRC: Truth and Reconciliation Commission, South Africa

# **CHAPTER ONE: BACKGROUND, OBJECTIVES, OVERVIEW**

## **1.1 Background, context and the research problem**

The killing began after April 6, 1994, when the plane carrying the Presidents of Rwanda and Burundi was shot down near Kigali, resulting in their deaths. A fragile power-sharing peace accord among several political groups fell apart. Over the next 100 days, radical Hutu political and military groups mobilized and slaughtered some 800 000 Tutsi and moderate Hutu civilians. Ultimately, a largely Tutsi army (the Rwandan Patriotic Front [RPF]), led by the current President Paul Kagame, invaded from Uganda, took control and stabilized the country.

Like many people, I could not imagine the intensity of the horror which had swept across Rwanda at this time. The survivors and the international community demanded answers. Moreover, the judicial system in Rwanda, devastated by the conflict, could not handle the volume of cases generated by the hostilities, with over 100,000 individuals in prison accused of crimes committed during the conflict (Integrated Regional Information Networks [IRIN] 2003); Clark (2012: 3) put the figure at 120 000. The United Nations created the International Criminal Tribunal for Rwanda (ICTR) in 1994 which applied Western judicial processes to the proceedings.

It was never anticipated that the ICTR would try all of the alleged perpetrators. The Rwanda jurisdiction that was supposed to manage these cases had been destroyed by the war so that there was extremely slow progress. Over almost 20 years of operation (1996-2015), the ICTR indicted only 92 people for genocide crimes, of whom 70 were convicted (Bowcott 2014: 13). For a review of the work of the ICTR during its early years, see Norwegian Helsinki Committee (2002). Meanwhile, the Rwandan courts managed another 10 000 cases between 1996 and 2006 (IRIN 2003). The huge numbers of accused waiting trial was unacceptable, both for the prisoners and for the survivors searching for justice. The Rwandan government was therefore obliged to find an alternative to this situation and decided to refer instead to the country's traditional legal system. In an effort to achieve justice and reconciliation, and to move the society forward, 'Gacaca jurisdictions' were created. According to Rwandan President Paul Kagame, this legal

system was in accordance with the traditional ways of dealing with conflicts and misdemeanors which had operated in Rwanda for generations (Des Forges 1999: 18).

It is important to understand just how ambitious an undertaking the Gacaca process was. To start with, there was the sheer number of courts at the community level - about 12,000 Gacaca jurisdictions, of which 1,545 were designed to conduct most of the trials (Carter 2008: 42-43). Furthermore, the crimes to be heard in Gacaca courts - genocide and crimes against humanity - rank among the most severe known to the world and the goals of the proceedings, combining justice with reconciliation, and were thus hugely complex.

### **1.2 The Gacaca concept**

I was present during one of the early Gacaca trials in 2002. When I looked around I could see about 50 people seated on the ground, all originating from the small Rwandan community of Gatovu. Nearby, I noticed a group of four women, chatting in low voices. On the right, I noticed 15 men and women sitting on a wooden bench, protecting themselves from the sun with small umbrellas. Each Rwandan community had been through an election and Gatovu was no different: villagers had chosen a number of respected individuals to act as judges at the Gacaca court and bestowed upon them power from the community to deal with those currently imprisoned for allegedly committing crimes during the 1994 genocide.

Several hours later the first group of prisoners – suspected *genocidaire* - arrived, all from detention in the central prison of Gikongoro. They looked around for friendly faces, hoping that their relatives would express support for them. The survivors in the audience knew or suspected these men of massacres, and of exterminating their family members. Amid the mob a woman shook her head and said: ‘Look how their relatives welcome them. They almost applaud while they are responsible for the killings and have lost nothing. They can even have children if they want!’ Then the court ‘president’ asked the audience to sit down in preparation for the Gacaca tribunal (the word in Kinyarwanda language means “grass”, implying being out in the open for all to see). Seven judges, elected by the community and regarded as people of integrity, presided and the audience comprised local residents; none of the judges had legal training.

The question about how to manage war crimes and cases of massive human rights violations has not only been experienced by Rwanda. Different countries have adopted different approaches ranging from war crimes trials like the Nuremberg Trials to judge Nazi leaders through to South African's Truth and Reconciliation Commission in which one could admit guilt and request amnesty. The Rwandan approach of adapting an institution of African traditional justice to deal with widespread human rights violations was new.

Women were often among the most active and voluble participants during genocide hearings, an interesting point when it is recalled that they were excluded from any official role in the traditional version of Gacaca which dealt with family disputes and day-to-day infractions. Even so, in the modern incarnation of Gacaca, less than fifty of judges were female despite the fact is that women paid a big price in the genocide and urgently needed reparation and justice.

Over its years of operation, the new Gacaca became a forum where communities could discuss sensitive and contentious issues beyond its official mandate to prosecute genocide cases. The discussion of crimes allegedly committed by the Rwandan Patriotic Front during their invasion from Uganda, crimes by the current ruling party against Hutus between 1993 and 1994 and post-genocide atrocities by the RPF in the Democratic Republic of the Congo were forbidden at Gacaca courts (Organic Law No. 08/96 of August 30). Nonetheless, I attended hearings in remote villages where participants debated at great length the failure to address RPF crimes. Judges tolerated these discussions but did not record any of the testimony in their court notes for fear that the transcripts would attract the attention of the authorities in Kigali.

Such things tended to only emerge after the perpetrators of genocide had been dealt with. Participants needed time to gauge what forms of discourse were safely permissible, and communities further away from Kigali determined that state surveillance of their hearings was minimal and that open debate of controversial topics was possible.

The Rwandan government took a risk in allowing the same population that had experienced the genocide to guide and shape Gacaca, although it was not a solution favored by all factions within the RPF leadership and other elites. The scale, duration and complexity of Gacaca in fact militated against the degree of centralized control alleged by some international detractors. Some local communities adjusted Gacaca to fit their own situations, sometimes in ways contrary to the

objectives of those who instigated the process. Gacaca took on a life of its own. As a result, Rwandan leaders will have to contend with the desire for substantial political participation which Gacaca has aroused among hundreds of thousands of ordinary Rwandans.

A key feature of Gacaca was its concern for reconciliation. In 2008, in response to extensive discussion in Gacaca hearings, the law was revised to require suspects to request forgiveness as well as confess and express remorse. Perpetrators and survivors often affirmed that the opportunity to speak openly at Gacaca about events and emotions concerning the genocide has contributed to their healing. Many perpetrators spoke of a sense of release from feelings of shame and social dislocation as a result of confessing to – and apologizing for – their crimes in front of their victims and the wider community. Many survivors say that they overcame feelings of loneliness by describing the personal impact of genocidal crimes in public and receiving communal acknowledgement of their pain.

The openness of the community dialogue at Gacaca is one of its key features. It differentiates Gacaca from the conventional forms of justice advocated by human rights organizations in which judges and lawyers control the discourse and discussions are limited to the legal facts deemed necessary to determine guilt or innocence. Gacaca pursues these same legal questions but in ways which enable participants to discuss the individual and collective effects of crimes, and how those responsible should be dealt with.

I spent several years in Rwanda (2009-2011) and, in between my duties with the United Nations Development Programme (UNDP), observed Gacaca hearings and listened to participants as part of my research. Communities argued over the details of genocidal crimes – which had killed whom, by what means, where bodies were buried, what property had been stolen, and who deserved compensation. Carter (2008) and Clark (2012: 1-3) have described typical Gacaca proceedings. Complex, often heated, discussions about the nature of justice were commonplace. To what extent should peasant perpetrators be held accountable when the genocide was initiated by political and military elites? Was the imprisonment of the guilty – as opposed to compensation for victims – the preferred outcome of the process?

Many foreign commentators view Rwandan society as closed and secretive but Gacaca has demonstrated a capacity for vigorous political exchange. This was especially visible during the

prosecution of local mayors, prefects and other senior government officials after the 2008 reform to the Gacaca Law, which meant the transfer of certain genocide cases from the national courts to Gacaca. (Prior to 1998, Gacaca courts had not been able to try people accused of homicide [Wielenga and Harris 2011: 17]).

In general, Gacaca courts seem to have operated with a high degree of impartiality, despite the misgivings of Western human rights organisations about the suitability of Gacaca to deal with genocide crimes (Clark 2012).

### **1.3 Overall aim and specific objectives**

The overall aim of this research is to explore the attitudes and experiences of a small sample of Rwandans to the Gacaca approach to dealing with the legacy of genocide. Its specific objectives are:

- To explain the situation facing the Rwandan government following the genocide and their decision to use Gacaca as means of providing justice and building reconciliation
- Using secondary sources, to document the Gacaca process, including its challenges, limitations and successes
- To survey the opinions, attitudes and experiences of a sample of Rwandans concerning Gacaca with particular reference to truth, justice and forgiveness and reconciliation.

### **1.4 Research methods**

This thesis is based on exploratory research involving collecting the opinions of people from three communities about the outcome of the Gacaca process. Hennink et al. (2011: 10), among others, recommend a qualitative methodology when it is desired to ‘go deep’ e.g. to get reasons for beliefs and attitudes. As articulated in the third research objective, this was the case in this research – I was continually asking why questions – so a qualitative methodology among a small number of participants was appropriate.

As noted previously, Rwanda had some 12 000 Gacaca communities and this research investigates only three – Rubavu, Kirongi (each of around 400 people) and Kigali Ngali (around

650) - which were chosen because they had largely completed their Gacaca process. The choice was made for reasons of convenience – by road, the first two are three hours from Kigali while the third is on its outskirts – and the recommendation of the National Unity & Reconciliation Commission (NURC) as communities where the process went smoothly. I have been very aware of the possible bias involved in taking the recommendation of the NURC, although its officers did assure me that these communities were typical rather than outstanding. More importantly, the Gacaca process in these two places was completed early (around 2009) and so allowed for reflection on the outcome by participants. Participants all were volunteers and were adult members of the three communities.

I employed two research assistants who were fluent in Kinyarwanda, Swahili and French. They conducted six focus groups involving a total of 46 individuals and 36 individual interviews. I used a thematic analytical approach to analyse the responses.

The fieldwork was carried out when I was a student at the University of KwaZulu-Natal and I strictly followed that university's ethical guidelines. All participation was voluntary and no real names were recorded or used.

## **1.5 Overview of the thesis**

This first chapter has established the research problem – the huge number of alleged perpetrators and the utilization of a version of a traditional system of justice to deal with it. It has also presented the research aim and its specific objectives.

The second chapter deals with ways of dealing with a bad past, with particular reference to truth commissions - and with the meanings of truth, justice, forgiveness and reconciliation. It explains the views of the Rwandan government on justice and reconciliation, its choice of Gacaca courts and provides an overview of their operation.

Chapter 4 reports the responses of a sample of Rwandans to questions concerning truth, justice and forgiveness/reconciliation.

Chapter 5 summarises and concludes the thesis and considers the implications for peace in Rwanda.

# **CHAPTER TWO: RWANDA'S CHOICE OF A PATHWAY TO RECONCILIATION**

## **2.1 Introduction**

As there is currently no universally agreed-upon definition of reconciliation, it may mean different things to different people in various contexts. In common parlance, reconciliation means some kind of agreement between disputants or adversaries. The peace studies/conflict resolution meaning of the term, however, goes deeper than that and prefers the term 'conflict transformation'. It can be argued that reconciliation, at its core, is about restoring a right relationship between people who have been enemies.

Reconciliation may be a desired goal in its own merit in divided societies. It may also represent a pragmatic way to try to deal with past injustices in order to achieve some other desired purposes such as building peace, nurturing democracy, promoting human rights and delivering justice. Thanks to the boost that reconciliation gained from South Africa's well-documented Truth and Reconciliation Commission, there is already a substantial literature on different efforts for reconciliation, which mainly focusses on truth, acknowledgement, reparations, retributive and restorative justice, apology and forgiveness. No single form of reconciliation effort is perfect or satisfactory to all circumstances and parties involved and hard choices often have to be made in deciding whether one form is preferable to another, depending on the specific circumstances of each conflict and society.

The purpose of this chapter is to meet the first and second research objectives viz. 'To explain the situation facing the Rwandan government following the genocide and their decision to use Gacaca as means of providing justice and building reconciliation' and 'Using secondary sources, to document the Gacaca process, including its challenges, limitations and successes' (see section 1.3).

## **2.2 What to do with a ‘bad past’?**

Many African countries have come out of wars in the past two decades. When the violence ends, what is a country to do with its ‘bad past’? Some of the options – it should be noted that more than one can be applied - are as follows:

- Amnesia – pretend that it did not happen
- Dismissal – it did happen, but it isn’t important. Let us focus on the future
- Establish a truth commission to record what happened
- Employ retributive justice against the perpetrators through the legal system, ranging from fines, exclusion from government employment and political involvement, imprisonment, execution
- Pay reparations/compensation to victims
- Assist victims to heal from the trauma of violence
- Employ restorative justice e.g. victim:offender mediation and other forms of dialogue to build understanding in the hope of bringing about forgiveness and reconciliation
- Formal ceremonies and rituals of remembrance, once off or on-going

The experience of three countries - South Africa, Rwanda and Mozambique – will help understand the complexities of the last task.

### **2.2.1 South Africa – wideranging truth, forgiveness and reconciliation, without justice**

Under the years of apartheid, over 18 000 people died as result of direct violence by the state (Darby and McQuinn 2003). In addition, some 80 000 were detained, 6000 of whom were tortured (Coleman 1998:56). How could people, now under democratic rule but bearing deep pain and anger as a result of three decades of apartheid policies, deal with this bad past?

The path chosen was to establish a Truth and Reconciliation Commission under the Promotion of National Unity and Reconciliation act of 1995. It was authorized to investigate human rights

abuses committed by all parties – not only the government - during apartheid between 1960 and 1994 and to offer amnesty to individual in exchange for their full disclosure about their past acts. For its chairperson, Archbishop Desmond Tutu, perpetrators ideally would repent of their sins and victims would offer forgiveness, leading to reconciliation between individuals and ultimately for the nation at large. Many who supported the TRC agreed with Tutu that forgiveness not punishment was necessary to bring about reconciliation. Many found a justification for the model in Christian theology, which teaches people to forgive their enemies and to reintegrate the sinner back into the family of God (Kistner (1996: 15). In addition to this, the traditional notion of *Ubuntu* – connecting with and caring for others - was a further legitimating source. 'There is a need of understanding but not revenge, a need for reparation but not for retaliation, a need for Ubuntu but not for victimization' (Constitution of South Africa act 200, 1993). We examine the TRC in more detail in section 2.4.

### **2.2.2 Mozambique – ‘let’s not talk about it’, plus a general amnesty**

Following the liberation war against Portugal from 1964 to 1974, Mozambique was embroiled in civil war with Renamo forces fighting the Frelimo Government. The violence lasted until 1992, when the general peace was signed. Many civilians were killed, thousand were tortured and many acts of barbarism were committed but there was little interest in courts justice and punishment, only an amnesty that would cover acts committed by both sides. ‘Let’s not talk about it’ was the overwhelming view. ‘To talk and recall the past is not necessarily seen as a prelude to healing or diminishing pain. Indeed, it is often believed to open the space for the malevolent forces to intervene. [Furthermore] ‘... recounting and remembering the traumatic past would be like opening the door for the harmful spirits to penetrate the communities’ (Green and Honwana 1999: 45). In short, there is no telling the truth, no acknowledgement of wrong doing, no remorse much less any apology, and no forgiveness. Just forget the past and proceed, somehow, to reconciliation (Hayner 1996: 187).

### **2.2.3 Rwanda – reconciliation with retributive and some restorative justice**

Unlike South Africa, which chose the path of forgiveness without justice for go toward reconciliation through the mechanism of its TRC, Rwanda has preferred the voice of

‘reconciliation with justice’ (Mamdani 1996: 24) to punish those convicted of acts of genocide but also to build reconciliation.

While some South African churches provided a theological justification for apartheid, there was little or no church support – and indeed much opposition – to the direct and structural violence involved. But in Rwanda, many Christian churches profoundly contributed to messages of hatred and were directly involved in the genocide. Priests and pastors encouraged Hutu militias in their massacre of faithful Tutsis from their parishes (Des Forges 1999: 245-248) because they were integrated into the state structures and accepted its genocidal ideology. ‘For this silent acquiescence and lack of courage, the churches as institutions paid dearly. They will continue to live under a cloud of suspicion for years to come’ (McCullum 1995: 65).

Resolution 955 of the UN Security Council in November 1994 authorized the ICTR to prosecute the perpetrators of crimes against humanity and violations against the resolutions of the Geneva Convention for acts committed between January and December, 1994. As was noted in chapter 1, the Western model of justice used by the ICTR could simply not cope with the numbers in prison, especially given that its mandate was scheduled to end in 2008. The trials were tedious, drawn-out affairs dominated by debates over the minutiae of international law. Similar constraints were faced by the Rwandan legal system although it was, at least, based in the country. One estimate (Molenaar 2005) suggests that it would have taken up to 200 years to deal with the numbers of accused, given the capacity of Rwanda’s court system. Faced with huge delays, the prosecutor of the Republic of Rwanda, Mr. Gerard Gahima, announced in 2001 that the traditional court Gacaca would be employed to finish all the remaining cases and to do so without maintaining a spirit of revenge. Gacaca had the specific advantage of allowing the testimony of the whole community in the process of judgment and verdict. The Gacaca courts operated until mid-2012.

Although in part made redundant by Rwanda’s Western-style courts, traditional Gacaca had continued to be used to settle such cases as disputes between families, theft of livestock. Wise men heard from anyone who had an interest in the case and made a decision, the main purpose being to restore the social order in the community and to reintegrate the culprit in the society. Traditional Gacaca was less focused on sanctions and the sentences, although symbolic sanctions

exist in the system; it was more focused on the restoration of harmony by reintegrating the guilty.

Support among Rwandans for the use of Gacaca to deal with genocide crimes was immediate and strong. Supporters believed that this system would encourage truth, the guilty are more likely to speak the truth, will have more remorse for acts committed and will be more likely to ask for forgiveness. There are clear parallels here with the emphasis by proponents of restorative justice, notably John Braithwaite, who stress the importance of publicly-expressed shame on the part of the offender. Survivors will learn to forgive while culprits will have sentences such as the community service and will at the end be reintegrated into the community. Indeed, Gacaca will allow the guilty to express remorse for acts committed, in which case the sentences can be reduced. As many as 60 000 alleged perpetrators confessed to crimes under Gacaca (IRIN 2004), which has made it easier for victims and their families to forgive them. Compensation is also embodied in Gacaca; the guilty typically paid something symbolic in recognition of their actions. This compares to the process of reconciliation in South Africa where it was the government's responsibility to pay reparations to the victims; to date, it has not done so.

Traditional Gacaca was, as we have seen, essentially restorative and any sanctions which imposed being decided on by the community. In the modified Gacaca, decisions as to guilt and punishment are decided on by the judges. So rather than it being a negotiated process between an offender and their family and a victim and their family, modern Gacaca is a legal process where an offender takes individual responsibility with input from the community in terms of clarifying what actually happened.

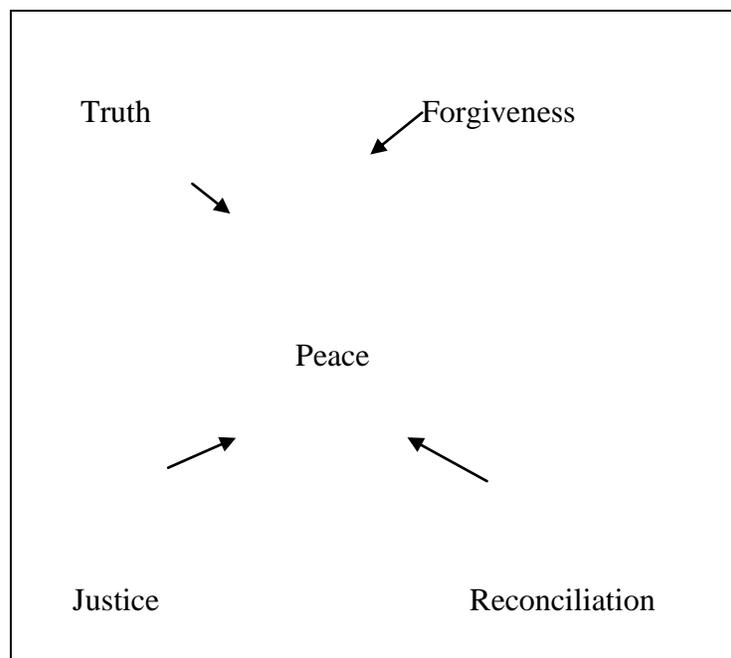
A related concern from Amnesty International (2002) and other NGOs was that the new Gacaca does not allow an accused to bring evidence against the accusations i.e. an accused person does not have a procedurally equal position during the trial and has no legal representation. The basic accusation is in the 'case files' presented before the Gacaca court and those presiding over the Gacaca tribunals, having little or no legal training, are unlikely to challenge the information in an official case-file. There is 'no separation between prosecutor and judge' (De Ycaza 2010: 21). These features place the modern Gacaca in the retributive justice category rather, as it was traditionally, a restorative justice approach.

### 2.3 Key components of peace

Simon Fisher (2004: 67-68) notes that ‘any conflict which is at all deep is laden with emotion, and often involves feelings of grievance and guilt’. What needs to happen, he asks, for reconciliation to occur? His answer is truth, justice and forgiveness.

One of the main writers on reconciliation – Jean Paul Lederach (1997; 2001) – has produced the following diagram where four key contributors to peace are laid out; these provide a focus for this research. Alternative diagrams have been devised by other researchers e.g. Kriesberg (2001: 60-61; Molenaar 2005).

**Figure 2.1: Lederach’s diagram of reconciliation and peace**



Source: Lederach (1997), modified by the author

Lederach defines truth as an exploration of the history and opinions held by the conflicting parties in order to come, if possible, to a common overall understanding of history or at least a recognition of points of view of each party. The very fact that it requires a struggle to come up with a common overall understanding – and much listening to one another – may itself be the beginning of better understanding and acceptance. The main achievement of the TRC, in my opinion, has been that the seven volume *Report* is pretty much accepted by all parties as the truth of what went on under apartheid in terms of human rights abuses.

Justice obviously depends on truth but how should justice is understood? We have already distinguished between retributive justice – where the state legal system prosecutes the accused and imposes a punishment – and restorative justice – where the victims and the wider community have a voice in deciding what will happen and where the main objective is to restore good relationships. Some form of justice seems essential after violence; it is unlikely that justice will be seen to be done or felt to be done if the Mozambican approach is followed.

Forgiveness depends on truth and justice. If the truth is not admitted, it is much more difficult for a victim to forgive a perpetrator. In the words of a bereaved Uruguayan woman, ‘I am ready to forgive but I need to know whom to forgive and for what’ (Rigby 2001: 8). And if no justice is forthcoming – whether it be a court-based sanction or an expression of shame and remorse before a community – it may very difficult for a victim to forgive, although a victim may still forgive someone who has shown no remorse for their own (the victim’s) sake – so that they can lay down their burden of hurt and anger. The common idea of ‘forgiving and therefore forgetting’ may not be possible because we never really forget, as Lederach’s quote below points out. But we can deal with our past hurts, reduce the power they have over us, and move on. Former Zambian president Kenneth Kaunda reminds us that we have a choice. He once defined forgiveness as ‘a constant willingness to live in a new day without looking back and ransacking the memory for occasions of bitterness and resentment’ (cited by de Waal 1990: 77). But is this enough? Should we also try to develop a positive regard for the other party? Lederach (2001: 191) tells us that positive change is possible:

*The challenge of reconciliation is not how to create the place where one can 'forgive and forget'. It is about the far more challenging adventure into the space where individuals and whole communities can remember and change.*

The Latin word for forgiveness is *venia*, which means grace, indulgence, favor and pardon. But it is important to note that forgiveness is not ignoring, disregarding, tolerating or excusing the sin of another person. That is why forgiveness in the absence of shame and remorse on the part of the perpetrator is very hard to accept.

Forgiveness may be necessary for reconciliation but it is probably not sufficient. You might forgive a person for a particular action but still harbor ill-feelings towards them (if so, have you really forgiven, remembering that forgiveness is a journey rather than a decision made at a point of time, once and for all?) and want nothing to do with them. Bosman (2007) quotes the words of Johann Christoph Friedrich von Schiller that 'A merely fallen enemy may rise again, but the reconciled one is truly vanquished'.

Finally, if the relationships between people are characterized by truth, justice, forgiveness and reconciliation, there may be peace – negative (the absence of violence), positive (where the underlying causes of conflict have been dealt with) and transformative (which speaks of new relationships which are the outcome of forgiveness and reconciliation).

#### **2.4 South Africa's Truth and Reconciliation Commission**

South Africa's TRC is well regarded worldwide and has been a model for many similar commissions, although Rwanda chose a quite different approach to its 'bad past'. The TRC was a court-like restorative justice body assembled to investigate gross human rights violations. Victims were invited to give statements about their experiences and some were selected for public hearings. Perpetrators of violence could also give testimony and request amnesty from both civil and criminal prosecution. Among the many overviews of its work is that of its deputy chair, Alex Boraine (2000). The TRC was the forerunner of some 20 held internationally to stage public hearings, and is seen by many as a crucial component of the transition to full and free democracy in South Africa.

The TRC was set up in terms of the *Promotion of National Unity and Reconciliation Act*, No. 34 of 1995, and its public hearings started in 1996. The mandate of the commission was to bear witness to, record and in some cases grant amnesty to the perpetrators of crimes relating to human rights violations, as well as make recommendations on reparations and rehabilitation. Its influential chair was Archbishop Desmond Tutu.

The work of the TRC was accomplished through three committees:

- The Human Rights Violations Committee investigated human rights abuses that occurred between 1960 and 1994.
- The Reparation and Rehabilitation Committee was charged with restoring victims' dignity and formulating proposals to assist with rehabilitation.
- The Amnesty Committee considered applications from individuals who applied for amnesty in accordance with the provisions of the Act.

The commission was empowered to grant amnesty to those who committed abuses during the apartheid era, as long as the crimes were politically motivated, proportionate, and there was full disclosure by the person seeking amnesty. To avoid 'victor's justice', no side was exempt from appearing before the commission. The commission heard reports of human rights violations and considered amnesty applications from all sides, from the apartheid state to the liberation forces, including the African National Congress. A total of 7112 amnesty applications were received, of which granting only 849 were granted. The TRC's official website is available at (<http://www.justice.gov.za/trc/amntrans/index.htm>).

The TRC's emphasis on reconciliation is in sharp contrast to the approach taken by the Nuremberg Trials after World War II (see section 2.2). Because of the perceived success of the reconciliatory approach in dealing with human-rights violations after political change either from internal or external factors; other countries have instituted similar commissions, though not always with the same scope or the allowance for charging those currently in power.

Among the various evaluations of the effectiveness of the TRC, Vora and Vora (2004) surveyed the opinions of 158 university students from English, Afrikaaner and Xhosa ethnic groups. Using

a seven point Likert scale, they asked for levels of agreement/disagreement to nine statements, including two of particular relevance to our research i.e. ‘The TRC is effective in bringing out the truth’ and ‘The TRC is effective in bringing about reconciliation’. While there were differences between the ethnic groups, most respondents responded positively to two these statements.

A much larger study (Gibson (2004; 2006) involved a nationally-representative sample of 3727 South Africans, who completed a questionnaire containing 101 questions. Gibson specifically investigated whether truth was bringing about reconciliation in South Africa and found the answer to be:

*... a cautious and qualified ‘yes’, at least for some groups in South Africa. ... and that truth ... for did not undermine reconciliation within any of the groups in South Africa, and for whites, Coloured people, and those of Asian origin, truth may have actually caused reconciliation. And among at least some blacks – those who are not religious – truth also seemed to facilitate reconciliation.*

(Gibson 2006: 410-411)

A 1998 study (Centre for the Study of Violence and Reconciliation & the Khulumani Support Group 1998) surveyed several hundred victims of human-rights abuse during the Apartheid era. Most of the victims felt that the TRC had failed to achieve reconciliation between the black and white communities. Most believed that justice was a prerequisite for reconciliation rather than an alternative to it, and that the TRC had been weighted in favor of the perpetrators of abuse.

The Reconciliation Barometer produced annually by the Institute of Justice & Reconciliation since 2003 provides a measure of reconciliation from a representative sample of South Africans. Interviews with 3590 nationally representative South Africans found that 17.4% believed that race relations had worsened since 1994 and 40% believed they had improved. Income was seen to be the biggest factor which divides South Africans:

*... the results indicate that South Africans have not yet gained a mutual understanding and awareness of divided lived realities across race and class lines. Socially and psychologically this lack of connection across intersecting race and class barriers is connected to patterns of economic, geographical and*

*social exclusion. Furthermore, results demonstrate that South Africans do not share a desire for economic redress across race. Black, coloured and Indian/Asian South Africans are 20–30% more likely to agree on the need for economic redress and victim support than white South Africans.*

(Wale 2013: 8)

Playwright Jane Taylor, responsible for the acclaimed *Ubu and the Truth Commission*, found fault with the Commission's lopsided influence:

*The TRC is unquestionably a monumental process, the consequences of which will take years to unravel. For all its pervasive weight, however, it infiltrates our culture asymmetrically, unevenly across multiple sectors. Its place in small rural communities, for example, when it establishes itself in a local church hall, and absorbs substantial numbers of the population, is very different from its situation in large urban centres, where its presence is marginalised by other social and economic activities.*

(Taylor 2007: 5)

## **2.5 The Gacaca path**

We have already seen that the new Rwandan government under Paul Kagame was faced with a multi-faceted task of huge complexity, which can be summarized as follows:

- It had huge numbers of accused perpetrators from the genocide in prison who it needed to bring before justice. The culture of impunity which had operated in earlier violence – in 1959, the 1970s and earlier in the 1990s – would not continue.
- It determined that the truth which would be allowed to come out was only that concerning the 1996 genocide; events before or after, including alleged atrocities by the RPF, would not be subject to scrutiny.
- It wanted peace of a kind which would help prevent any future genocide i.e. reconciliation was a central goal.

Faced with these, Rwanda opted for the seventh option listed in section 2.2 - a transitional justice based on Gacaca courts that sought justice and also promotes reconciliation. We saw in section 2.3 that Lederach believes that to come to the 'place of peace', the key elements of Truth, Mercy, Justice and Reconciliation have to come to a meeting point. His idea behind such a thought is

based on the notion that “reconciliation is a locus, a place where people and things come together” (1997: 19). People coming together to establish provide mercy, render justice and share peace is what reconciliation is about and the final objective of Rwanda government when they established Gacaca courts.

Establishing the truth about injustices, how they occurred and reasons behind the actions and inactions of perpetrators is considered as very vital element in reconciliation processes. Truth is understood to be the ‘longing for acknowledgement of wrong and the validation of painful loss and experiences’ Lederach (1997: 19). Even if nothing else happens, uncovering the truth has a healing property because there is a belief that “when trials bring reconciliation, it is seen primarily to be due to the uncovering of truth. In fact, revealing the truth is much more important to forgiveness and reconciliation than is punishment.

As Lederach mentions, truth implies that the perpetrator admits to wrongdoing and is remorseful. If this happens, the next required component is mercy which involves letting go of anger and hatred and starting again with the person. Each guilty plea under Gacaca called for an offer of forgiveness from the victim’s family, friends and the state. Truth and mercy may lead to forgiveness but possibly not to reconciliation if justice is denied. To Lederach, justice ‘represents the search for individual and group rights, for social restructuring and for restitution - but it is linked to peace’ (1997: 20).

## **2.6 An overview of Gacaca**

### **2.6.1 Origins, judges, standards of proof**

Rwanda, a member of the Security Council at the time the ICTR was established, voted against the proposed ICTR for the following reasons:

- The new government objected to the 1994 time limit in the ICTR’s jurisdiction, arguing that massacres had already occurred and that much of the planning took place before 1994;

- It objected to the seat being outside of Rwanda, arguing that justice must be undertaken in the country itself; Rwanda could not accept that those sentenced would serve prison sentences outside Rwanda;
- It opposed the exclusion of the death penalty as a possible sentence that the ICTR could impose, particularly in the light of its own national retention of capital punishment. The exclusion of capital punishment from the ICTR's sentencing structure illustrates that the tribunal is a product of compromise. The international community, especially European powers, would not have accepted the imposition of capital punishment by the ICTR. Although the ICTR cannot impose the death sentence as requested by Rwanda, the cooperation of states like Belgium and France were ensured by deleting this sentencing possibility.

Despite its reservations, Rwanda cooperated with the ICTR after its establishment. The main success of the ICTR has been the prosecution of some of the masterminds behind the genocide.

Against this background, one of the possible responses - amnesty - appeared very attractive. However, the government opted for prosecutions. In August 1996, Rwanda passed Organic Law No. 08/96 of Aug. 30, 1996 on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes Against Humanity committed since Oct. 1, 1990, *available at* <http://www.preventgenocide.org/law/domestic/rwanda.htm> [hereinafter Organic Law]), which recognized four categories of genocide criminals:

- Category 1 comprised the alleged planners, organisers and leaders of genocide and those alleged to have committed sexual crimes including torture and rape.
- Category 2 were the co-perpetrators or accomplices of voluntary homicide or violence with the intent to cause death or serious bodily harm leading to death.
- Category 3 were the perpetrators of serious bodily injury to others without intention to murder.
- Category 4 were the perpetrators of crimes resulting in property theft or damage.

Gacaca courts had jurisdiction over the last two categories but in 2008, their mandate was extended to include category 2 crimes.

Gacaca judges called *inyangamugayo* were elected by local communities were not enough qualified to handle serious cases and it was impossible to expect the more than 12, 000 Gacaca courts to apply uniform legal standards. They were an urgent need for judges to be trained. The genocide had devastated the judicial system, with only 237 judges remaining out of more than 600 who were in service before the genocide. While the number of judges had more than tripled by 1996, it was still not enough to run with the caseload of genocide-related cases. Women were well represented amongst Gacaca judges but remained in the minority.

Gacaca judges did not receive any monetary remuneration for their services, although in recent years the SNJG gave them some in-kind compensation as well as a small payment. By law, Gacaca judges could be replaced if they repeatedly failed to appear at hearings without good reason, were convicted of an offence and received a sentence of six months' imprisonment or more, incited sectarianism, took up a political or government positions, or did anything that is incompatible with their role as persons of integrity. Initially, many judges were removed for alleged participation in the genocide and thousands more were removed subsequently.

Unlike the conventional justice system, Gacaca courts had no procedures governing what evidence was admissible or inadmissible, who had the burden of proving that a person committed a crime, and what standard should be used to determine guilt. Certain general legal principles applied, such as an understanding that eyewitness testimony was preferable to hearsay, that relatives' testimony may be biased, and that corroboration by several witnesses made an allegation more credible and reliable. Still, Gacaca practices lacked uniformity or consistency. Hearsay testimony was routinely relied upon and given significant weight without taking steps to summon the person who made the original statement. Convictions were also often based on uncorroborated or inconsistent statements by witnesses, some of whom had no direct knowledge of the events in question.

Because Gacaca trials did not involve a prosecutor, at the beginning of a trial presiding judges announced the charges against the accused and provided a general overview of the allegations. The accused was then given the floor to provide information and set out his or her defence.

Judges often ask follow-up questions. Then, witnesses to the events were called, with those testifying against the accused appearing first, followed by any defence witnesses. The civil party, normally the victim or relatives of the victim, usually made a statement. Once the witnesses had been heard, the proceedings are opened to the general population for statements or questions to anyone who has already spoken.

Although the law required that an accused be presumed innocent, in practice the burden generally fell on the accused to prove that he or she did not commit the alleged crime. The absence of a public prosecutor placed the burden of proof even more squarely on the accused. Many judges openly demonstrated hostility to the accused, made disparaging remarks or interrupted the testimony of the accused. The accused also had to bring his or her own witnesses to help defend him or herself against the allegations. If he or she was unable to find defence witnesses, the accused was usually convicted.

Often, Gacaca jurisdictions applied divergent standards of proof. The Gacaca laws gave no objective guidance on how much weight to give to witness testimony, the necessary level of corroboration to establish facts, and the amount of evidence needed to convict a person. As a result, judges were left to subjectively decide on these matters. The only requirement under the 2004 Gacaca Law was that ‘judgments must be motivated’ and be signed or marked by all members of the Gacaca court (Gacaca Law, 2004 Art. 25). Gacaca judgments differed from regular court judgments in that they were not formal written opinions but rather short handwritten summaries (known as ‘fiches de judgement’) which were included in the register of minutes for each jurisdiction and are signed by the judges and the accused. In some cases, even the charges that were retained or dismissed against the accused were missing from the judgment. These deficiencies made the appeals process more difficult for accused persons, as well as for judges hearing the appeals.

In 2004, the Simplified Guide to Trial Procedures (SNJG) was issued to assist judges in deciding cases and to ensure some degree of consistency between jurisdictions. It launched an initiative through which Gacaca judges confronting particularly complex issues could ask legal experts for help. (Gacaca Law, 2004: Art. 26.). The SNJG had a Kigali-based team of experts who fielded

telephone calls from jurisdictions throughout the country and who occasionally visited judges to discuss issues.

Two areas that illustrate the extent of divergence in courts' decisions were legal intent and witness credibility. The requirement of 'intent', under which the court must establish the state of mind of the accused and conclude whether or not he or she intended to commit the alleged crime, proved to be one of the most difficult concepts for judges to grasp. In order to convict a person for genocide under Rwandan and international law, a court must find that the person intended "to destroy, in whole or in part, a national, ethnical, racial or religious group" (Genocide Law, art. 1). If the intent requirement was not proven, a court should acquit the accused of the specific crime of genocide. In practice, however, judges rarely considered the issue of intent and almost never included it in the reasoning of judgments. The result is that many people were convicted of genocide without any proof that they intended to destroy, in whole or in part, the Tutsi ethnic group. Given that most Gacaca cases involved genocide, the SNJG should have instructed judges on the need to consider the intent of the accused and should have provided detailed guidance on the issue.

This issue proved particularly problematic when judges confronted the question of accomplice liability. Under the Gacaca laws, an accomplice is someone who "by any means, assisted to commit offenses" and is punished to the same degree as the main perpetrator of the crime.

In some cases, judges also struggled to assess the quality of testimony. At times, they failed to identify bias on the part of witnesses against one of the parties or failed to probe further when obvious inconsistencies arose within a witness statement or between different witnesses.

### **2.6.2 Broad criticisms of Gacaca**

In this section, I will leave out criticisms related to legal process, on which see Haile (2000), which fall outside the scope of the thesis' objectives. Wielenga and Harris (2011: 22) suggest that a significant critique against Gacaca is that it deals only with the crimes of genocide and not with the crimes against humanity on the part of the RPF, before and after the genocide. Filip Reyntjens (2010) documents the massacre of over 200 000 Rwandan Hutu refugees by the Rwandan army, at first in the camps near the DRC-Rwanda border and then as they fled

westward across the DRC. Given Reyntjens' careful analysis, denials will ring hollow. That the international community, following its failure to intervene in the Rwandan genocide, condoned this behaviour by the Rwandan government in 1997 is almost beyond belief. Was the international community so guilt-racked about their failures in 1994 that they were willing to condone atrocities by the Rwandans – the new local power - as something they were entitled to do? Incidentally, in answer to the assertion that the refugees were those guilty of genocide crimes, Reyntjens notes that a maximum of 10-15% of the refugees were suspected of having been involved in the 1994 genocide (2010: 90). Gacaca was specifically excluded from investigating such crimes.

The government view was that cases involving RPF soldiers who committed crimes need to be taken to military jurisdiction, a legal process separate from genocide crimes. When asked about this, the representative from the ASF said that most Rwandans find the military judicial process intimidating or inaccessible and that ASF had recommended to the government that an accessible system needed to be put in place so that Rwandans could feel sufficiently safe to report these crimes (Personal interview with a representative of ASF, Kigali, 22 January 2007).

In a context of strong government authoritarianism, Wolters (2005: 15) found that 'anyone who might choose to speak openly about the problems associated with the Gacaca process would be accused of 'divisionism' and that this left little room for the kind of national dialogue such a process needs'. Added to this is the fact that participation in Gacaca was mandatory by law and anyone who did not testify may be imprisoned for up to six months. As a result of these kinds of strictures, some of the Hutu diaspora view *Gacaca* as a government tool to exact revenge against the population and view it as 'victor's justice' (2005: 15).

### **2.6.3 Positives**

Although Gacaca may not be a restorative model of justice in any pure sense, this does not mean that it failed to contribute to the process of justice and reconciliation. The vast majority of cases were dealt with, communities had the opportunity to give voice to what happened, survivors now know how friends and family died and where bodies are buried and details of how the genocide unfolded came to light. Gacaca was a public event and involved whole communities, which may

explain why it was regarded more favourably than other parts of the legal system (Pham et al. 2004: 610)

In short, the process of Gacaca has allowed the story of what happened to be heard. Bronkhorst (1995: 32) writes as follows:

*The dead must be counted and buried, the victims' stories must be recorded, told and retold until the whole truth is out. Reconciliation between opposing classes and groups can only be realized once the facts, the background, motives and emotions have been recognized and admitted by both sides.*

Gacaca has helped to bring the facts of the genocide out into the open, at least with regard to the actions of the genocide perpetrators against Tutsi and moderate Hutu in the attempt to eradicate an ethnic group.

There also seems to be strong belief that has Gacaca allowed justice to happen. A representative of ASF, when asked by Cori Wielenga whether Gacaca was contributing to reconciliation, immediately responded that 'Justice is being done' (Personal Communication, August 5, 2012). At a later stage she added that one cannot legalize reconciliation. Gacaca may create a space where reconciliation has the potential of taking place but it is up to individuals to make use of this opportunity. There are also the democratization benefits of Gacaca – which were probably not envisaged by the government – as discussed in section 1.2.

Finally, as Bronkhorst has noted, far from resulting in mob or vigilante justice, as many legal critics predicted, about a quarter of Gacaca cases have resulted in acquittals. Many sentences were commuted to community service, thus helping the reintegration of detainees into society (2005: 35).

De Ycaza (2010: 25) sums up her review of studies of Gacaca in very optimistic terms:

*... the performative function of the gacaca trials is the most effective [of the available legal approaches] ... for determining the collective memory of society and reconciling the trauma inflicted on the victims of the genocide. [They involve] ... integrating victims and perpetrators into the justice process,*

*promoting unity and rebirth. The process fosters community by bringing the people of the local villages together in the judicial process of accountability to create a collective narrative of the trauma experienced by members of the community. This allows the process of healing to begin. ...*

Other reviews are less positive. Yolande Bouka's research with released prisoners led her to conclude that those who had spent years in prison after the genocide were assumed guilty and were in turn 'dehumanised and considered unfit and untrustworthy members of society ... [T]he stigma of having been accused – even if not convicted – of genocide crimes makes a former detainee a vulnerable respondent living on the margin of citizenship' (2013: 115).

## **2.7 Summary and conclusion**

To expect those who were victimized to forgive those who abused them and/or their loved ones, an environment has to be created where people can tell their stories, be assured that they are being taken seriously and feel that justice will result. Then, it seems, they may be better able to forgive and reconcile. At face value, perhaps there was more justice under Gacaca than the TRC. Chapter 4 will provide evidence about whether this perception of justice helped individuals to forgive and reconcile.

The next chapter will discuss the research methods I used to gather the opinions of Rwandans about Gacaca which is my contribution to knowledge.

## **CHAPTER 3 : RESEARCH METHODS**

### **3.1. Introduction**

This chapter explains in detail how I collected my primary data and analysed it in an effort to meet the third research objective from section 1.2 viz. ‘To survey the opinions, attitudes and experiences of a sample of Rwandans concerning Gacaca, with particular reference to truth, justice and forgiveness and reconciliation’.

### **3.2 Research design**

Different words have been used to denote ‘research design’, but I assign the meaning used by the standard South African research methods text (Mouton 2001). Alternative words can be study design, research strategy or research approach but the important thing is to know that research design is ‘a plan or blueprint of how one intend to conduct the research’ (Mouton 2001: 37). Common examples are exploratory research, action research, and experimental research. The present study is exploratory – aimed at finding out what is out what a sample of Rwandans thinks about various aspects of the Gacaca process. Of course, I already had some knowledge from secondary sources, as presented in Chapter 2.

### **3.3 Research methodology**

The main alternatives concern the type of data the researcher wants to collect. If it is important to secure fairly straightforward responses from (or data concerning) a large number of people (a relevant example is the Institute of Justice and Reconciliation’s annual *Reconciliation Barometer*) so as to be able to draw conclusions about the South African people as a whole), or to provide numerical estimates, then a quantitative research methodology is appropriate. However, if the researcher wants, for example, to understand why people hold certain attitudes, she/he may have to ask in-depth questions and follow up the answers given, then a qualitative methodology will be more useful. This will very likely be with a small number of people. Given my interest in opinions, attitudes and experiences concerning Gacaca, it is this second type which is used in this research. (The two types could be combined, in which case it is a mixed method research methodology).

Qualitative research has been described as ‘generic approach in social research according to which research takes as its departure point the insider perspective on social action’ (Mouton 2001: 28). This approach focuses on the importance of listening and is concerned with seeing the world from the perspectives of the research participants. By employing this method, I expected to understand participants’ attitudes and behaviour.

The most important ideas here are that human behaviour is based upon meanings which people bring to situations. Behaviour is not ‘caused’ in any mechanical way but is continually constructed and reconstructed on the basis of people’s understanding of the situations they are in. Babbie and Mouton (2001: 23) argue that

*The qualitative researcher should make an effort to become more than just a participant observer in the setting that is being researched. He or she also has to make a deliberate attempt to put themselves in the shoes of people they are observing and studying and to try and understand their attitudes, decisions, behaviour, practices, and rituals and so on, from their perspective.... Qualitative research is effective in studying those attitudes and behaviour within their natural settings, as opposed to the non-natural settings of experiments and surveys. The qualitative researcher’s stress is on studying humans in their natural surroundings and through the eyes of the actors themselves, together with an appreciation of the contexts in which these attitudes and behaviours are formed and played out.*

In qualitative research, the approach is ‘conversational, variable and adaptable and the objective is attained through active meeting between interviewer and interviewee around pertinent issues, topics and facts during the interview’ (Creswell 2014: 58).

### **3.4 Location of the research**

I collected data in three locations. Two – Rubavu and Karongi - were rural communities while Kigali Ngali was peri-urban; the levels of killing in the last were particularly high. The role of NURC in selecting these was discussed in section 1.4.3, as was the potential of having a biased sample.

### **3.5 Sampling**

The choice of communities in which to conduct the research was made for reasons of convenience – easy access and the recommendation of the NURC. As noted, I was concerned

about the possible bias involved in taking the recommendation of the NURC, although its officers did assure me that these communities were typical in terms of their Gacaca process. More importantly, the Gacaca process in these places was completed early (around mid-2008) and so there had been some time for reflection on the outcome by participants. The three communities had the following approximate populations and, in brackets, households, assuming five persons to a household:

Rubavu            400 (100 households)

Karongi           400 (100 households)

Kigali Ngali    650 (160 households)

The communities were ethnically mixed. I was not, under the new dispensation in Rwanda, able to bring ethnicity into the research although, as will be seen in the following chapter, some of the participants did so

Just as the communities were chosen for reasons of convenience, so were the participants in focus groups who agreed to be interviewed. Once the necessary introductions had been made and protocols observed, my research assistants were able to walk around the community and ask for people's cooperation. This was not a quick task, nor was the assembling of focus group participants in one place at one time. In no sense was this selection random but neither was it biased in any obvious sense; for example, snowball sampling based on the recommendation of one person by another was avoided. At the end of each focus group, a request was made for volunteers to participate in an individual interview.

It is important to note that those who were willing to participate invariably regarded themselves as victims or survivors of the genocide. While most were Tutsi/moderate Hutus, some were the relatives of Hutus who were regarded as perpetrators, most of whom were in prison or had been imprisoned for many years awaiting the legal process to deal with them. These relatives saw themselves as victims, if not during the 100 days of the genocide, then as a result of later events, including the machinations of the legal process.

### **3.6 The research personnel**

The research team comprised myself as the primary researcher, research assistant John Kalisa, a Rwandan who spoke French, English, Kinyarwanda and Swahili. In addition, a female research assistant with similar abilities - Butare Regine - was employed part-time. I trained them carefully in the objectives of the research and the techniques of focus group discussions and individual interviews and had on-going involvement with them. They proved invaluable, given their linguistic skills and local knowledge. I was constantly able to check my interpretations and understandings with them, which added greatly to the validity and reliability of the results (see section 3.9).

I worked hard to cultivate trusting relationships with my principal assistant John, the female assistant Regine and the communities where data were to be collected. It was very important for me to carefully consider the manner in which I was going to introduce myself and the study to ensure that the community was happy enough for the research to be carried out.

### **3.7 Data collection methods**

#### **3.7.1 Focus groups**

I began my data collection with six focus groups, two in each location, one made up of males and the other of females. A total of 46 individuals participated. A focus group involves a facilitator and around eight participants who are typically homogeneous in terms of age, gender and the like. The facilitator feeds a limited number of questions to the group and lets participants discuss it amongst themselves, just like discussions and debates take place in real life. Focus groups are all about the interaction between participants and the facilitator takes a low key role, although she/he needs to keep the group on track. The focus groups were held in school classrooms and community halls and lasted between 65 and 90 minutes. The discussions were recorded – with the permission of the participants – and then transcribed for later analysis. Standard treatments of focus group research may be found, for example, in Hennink et al (2011) and Creswell (2014).

In framing the focus group questions, I began with a long list of questions which are included as Appendix 1. From these, and with reference to my research objectives, I devised the following basic questions to be asked in the focus groups:

*1 Do you think that the truth came out in the Gacaca court cases in your community?*

*2 Do you think that the court's decisions were just and fair?*

*3 Do you think that Gacaca has resulted in forgiveness of perpetrators by victims?*

*4 Do you think that Gacaca has resulted in any reconciliation between people in your community?*

Focus group participants differ in terms of the quantity, quality and forcefulness of their contributions and we were aware that a dominant individual might move a group in a direction at variance with the views of the majority. Apart from trying to encourage all members of each focus group to participate, the use of direct quotations from informants is a way of guarding against a dominating individual, as was follow up in the form of interviews.

### **3.7.2 Interviews**

Having gained insights from focus groups, I then drew up a new set of questions and arranged for individual interviews. It proved simplest to ask for volunteers from those who had, some months previously, gone through the focus group process, and a total of 36 interviews took place. There was a clear move from the public aspect of a focus group and the much more personal and private context of an interview. So, for example, the interviewer might say. 'In the focus group, most people were saying .... Was that your experience?' The interviewers were also encouraged to use questions from Appendix 1 when they considered it appropriate. These interviews were done with household heads, although other members of the household were almost always present and usually became involved in the discussion. Again, these were recorded, with the permission of the household head. In three cases where permission was not given, the interviewer wrote down his/her recollection of the answers immediately after the interview.

### **3.8 Data analysis**

'Thematic content analysis' (Parker and Tritter 2006), also known as 'text' or 'narrative data analysis', was used to make sense of the data collected. As I read and re-read the transcripts (in

French), under the broad headings of truth, justice, forgiveness and reconciliation, I found that the participants' understandings of these (and other matters) began to become clear to me (but see section 3.9). It was not that they all had the same opinion about, for example, whether the whole truth came out in the Gacaca courts, but clusters of the different opinions became reasonably clear.

### **3.9 Validity and reliability**

Validity refers to accuracy e.g. did I reach correct conclusions from my observation? while reliability considers whether another researcher working on the topic would achieve the same results. On these, I was guided by Creswell's (2014: 201-204) 'eight validity strategies' and 'four reliability procedures' for qualitative research. Regarding the former, for example, I used triangulation (several data collection methods), spent a long time in the field and took my preliminary analytical results back to the data collectors and asked for their comments and opinions. On the latter, I did a lot of checking of focus group and interview transcripts for consistency (including issues of translation) and had on-going discussions with my research assistants.

I did not find any particular reluctance in the communities to engage in the research, which is interesting given the experience of other (admittedly white) researchers (Begley 2013; Bouka 2013) who found doing research in Rwanda to be fraught with difficulties. In particular, they found that individuals were very fearful of talking of their experiences and attitudes when these might be different from the official version of ethnicity and post-genocide justice.

Obtaining an accurate translation from English or French to Kinyarwanda (and vice versa) was a major concern. The translation exercise had to be done carefully because words and phrases have nuances and multiple meanings that are difficult to replicate in another language. We discussed the choice of words until we arrived at consensus but there was an ongoing discussion of the meanings of words and phrases during the research process.

### **3.10 Ethical issues**

My research proposal was initially approved by the Ethics Committee at the University of KwaZulu-Natal and I followed my approved proposal closely. All participation was voluntary and no real names were recorded or used in the subsequent reporting of results.

### **3.11 Research timetable**

I spent the first two years of my registration at UKZN (2007-2008) reading the secondary sources on reconciliation after violence and the establishment/operation of Gacaca, and planning my fieldwork. This explains, incidentally, why many of my references are from the period 2000 to 2007 because that is when I laid the foundations for my research. To deal with the possible charge that my references are out of date, I have added the findings of some significant pieces of research on Gacaca published after 2007.

My fieldwork, as outlined in Table 3.1, lasted from February, 2009 until October, 2010. I spent 2011 on data analysis but my work allowed me virtually no time for the research in 2012 and 2013. I returned to the analysis and writing, now as a student of Durban University of Technology, in 2014.

### **3.12 Conclusion**

This chapter has explained how I collected and analysed the data in the selected communities. In the next chapter, I present the data and discuss what they say, what they don't say and what they mean in terms of answering the third research objective.

**Table 3.1 Primary data collection timetable**

<b>Phases</b>	<b>Tasks</b>	<b>Dates</b>
<b>One</b> Preparation and planning	<p>Selection of the study areas based on advice from the national Unity &amp; Reconciliation Commission</p> <p>Design of focus group questions</p> <p>Training focus group facilitators</p> <p>Translation of focus group questions into Kinyarwanda or Swahili with instructions to the facilitators of what I was expecting.</p> <p>Piloting of the questions with individuals and adaption of the research instrument.</p>	February-May, 2009
<b>Two</b> Data collection: focus groups	<p>Conducted six focus groups, two (one male, one female) in each of the three study areas, each with eight people</p> <p>Transcribing of the recorded discussions in Kinyarwanda and Swahili; translation into English</p> <p>Analysis of the focus group discussions</p>	June, 2009-March, 2010
<b>Three</b> Data collection: individual interviews	<p>Design of questions for individual interviews</p> <p>Selection of 12 families from each of the study areas (very largely with people who saw themselves as survivors)</p> <p>Conducted interviews with the household heads (36 in total)</p> <p>Transcribing of the recorded discussions in Kinyarwanda and Swahili; translation into English</p>	June, 2010-October, 2010
<b>Four</b> Data analysis	Analysis and synthesis of data collected from the focus groups and the personal interviews.	Throughout 2011

# **CHAPTER 4 : DID THE GACACA PROCESS RESULT IN TRUTH, JUSTICE, FORGIVENESS AND RECONCILIATION?**

## **4.1 Introduction**

This chapter attempts to meet the third research objective viz. To survey the opinions, attitudes and experiences of a sample of Rwandans concerning Gacaca with particular reference to truth, justice and forgiveness and reconciliation (section 1.3), the inter-connections of which were explained in section 2.3. It reports the responses of individual focus group participants and individual interviewees, as explained in chapter 3. The words of the individuals themselves are used extensively and the quotations are either representative of the views of the majority of respondents or of interesting or divergent views; when a quotation falls into the latter category, this is clearly stated. It is important to note that the ethnic group of the individuals was not sought, in the spirit (and law) of the new Rwanda; if the ethnic background of the individual became apparent – and it often did - it was not recorded.

## **4.2 Truth**

In chapter 2, we noted that uncovering the truth about what went on under apartheid – and having it accepted as such by all parties concerned – was found to be a contributor to healing and reconciliation in South Africa.

Truth can have two aspects with respect to the Gacaca process. The first is whether the individuals involved – be they perpetrators, victims/survivors or bystanders – told the truth during the conduct of Gacaca courts in the relevant communities. It may be that individuals took the chance to settle old scores, or to provide an opportunity to take over another's property, by falsely accusing them of crimes during the genocide. It may be the alleged perpetrators lied – by claiming innocence in an effort to protect themselves from punishment or by admitting to crimes of which they were not guilty - as a way of getting out of prison where they had been for many years (on this, see Wolters 2005: 9-11). On the last possibility, it will be recalled that many Gacaca judgments were for community service by the accused. If victims gained that impression, then this would hinder progress towards forgiveness and reconciliation.

The second concerns a wider truth - whether the full story of what happened came out, as is largely accepted to have happened in the case in South Africa's TRC. This can include whether all perpetrators in the community were brought to justice and the even wider issue – of genocidal acts before and after 1994, including those carried out by the RPF.

The question asked in the focus groups was 'Do you think that the truth came out in the Gacaca court cases in your community?' Two main themes emerged in the focus groups and these were followed up in the individual interviews. Each theme will be illustrated with representative quotes from individual interviewees.

*Theme 1: There were obstacles to the truth coming out at Gacaca hearings.*

This theme had several aspects. The first was that providing testimony at a Gacaca hearing was a traumatic experience. One woman from Rubavu said 'When I gave my testimony, I had a psychological crisis. When you give a testimony surrounded by people who have killed your family, you feel ill ... you feel insane'. A number of individuals indicated that they, or someone they knew, could not face the stress involved in giving evidence at a Gacaca hearing; as a result, some testimonies were not heard.

A second was that the courts were viewed as places to hear allegations against individuals, with any alternate testimonies being branded as lies or treachery. 'Why is it that any person who tells the truth and defends a man is seen as a traitor?' (Male, Rubavu). 'Testifying for the defence risks having your statements regarded as lies' (Female, Rubavu).

*Theme 2: We should be trying those guilty of other genocides, not just that beginning in April, 1996.*

A third theme was that only one part of the country's genocidal past was dealt with by Gacaca.

*The biggest problem with Gacaca is the crimes we can't discuss. We're told that certain crimes, those killings by the RPF, cannot be discussed in Gacaca even though families need to talk. We're told to be quiet on these matters ... It's not justice. (Female, Kirongi)*

*Why doesn't the government want to judge RPF people who killed Hutus in the DRC. If they want a peace they must judge also RPF perpetrators. They need to come before Gacaca court and tell the truth of what happened. (Female, Rubavu)*

*Many Hutus were killed after the genocide in the DRC. I'm asking why genocide killings were considered but not murder in revenge. (Male, Karongi)*

One of the dangers is that bringing up the violence of the past, especially something as traumatic as the genocide, will re-traumatise victims and their families. In the words of a male from Karongi:

*I felt very bad. I felt as if it were 1994 during genocide; I saw the clubs, the machetes. I thought they would come to kill me again. I cannot forget.*

Overall, however, the more general feeling was one of relief that their stories could be told in public to everyone – victims, offenders, bystanders – and that the truth could come out.

To summarise the main themes on truth, participants were concerned that only a partial truth was allowed to come out – the perpetrators had little opportunity to defend themselves (and perhaps little incentive to do so; rather plead guilty and ask for forgiveness in the hope of leniency) while others were discouraged from speaking on their behalf. And more widely, only a narrow definition of what constituted genocide crimes was allowed to be considered by Gacaca courts. The benefits of having the truth revealed seemed to outweigh the trauma which some people felt.

### **4.3 Justice**

The question asked under this heading was 'Do you think that the court's decisions were just and fair?'

There was an ethnic divide when it came to perceptions of justice: victims and their families were more inclined to support Gacaca as mechanism for justice while alleged perpetrators were critical of its shortcomings – judicial bias and perjury on the part of prosecution witnesses being mentioned frequently. Victims and their families were often relieved that justice had at last been meted out to the perpetrators. Perpetrators and their families were concerned at judicial shortcomings.

The first concern was that the judges were not elected fairly and would therefore be biased.

*They are electing some judge, but who will lead the elections? Who will be elected, won't it be those who killed? (Male, Kigali Ngali)*

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

In general, however, judges were perceived of having acted with integrity, although it seems that that some judges asked alleged perpetrators for money:

*You have to give money. Gacaca judges aren't paid so they make arrangements to get money from those who are accused. I paid money to a judge. (Female, Rubavu)*

A number of the alleged perpetrators claimed that they did not know the charges against them until they appeared before the Gacaca court, which adds weight to the concern of NGOs that Gacaca often fell short in terms of justice (see section 2.2.3). And, as Yolande Bouka has noted, the guilt of those who had spent years in prison awaiting trial is often taken for granted rather than being based on the evidence presented and the verdict of the court. 'Reports of lies (by accused, accusers and witnesses on both sides), intimidation of witnesses, and corruption make some Rwandans wary of justice mechanisms ... including Gacaca' (2013: 115).

#### **4.4 Forgiveness**

The link between having the truth revealed and 'justice done', on the one hand and reconciliation on the other, is forgiveness. We discussed some of the complexities of forgiveness in section 2.3 but recognised that it is possible for victims to begin a journey of letting go of the hurt and anger they hold towards a perpetrator. It is important to note that victims may well, in addition to their feelings towards individuals, hold negative feelings towards a whole group.

The question on forgiveness was 'Do you think that Gacaca has resulted in forgiveness of perpetrators by victims?' Two main themes emerged:

*Theme 1: Forgiveness is very difficult because we can never forget what happened*

In the words of a female from Kigali Ngali, ‘Our pain is very great. How can we forget the wounds that we have in our hearts?’

‘ *We attended gacaca hearings trying to hear the truth telling and the asking for forgiveness; and we know that we need to forgive those who committed such atrocities for our country to move. But I can’t forget that I am left alone. With everything I do, I am reminded that I am alone.* (Male, Kirongi)

‘ *They killed all my family members; the killers were persons who were living with us in the same area, with who we had shared all our life. That’s how it is. We go to gacaca, we try to be patient, but to forget all that, it will never happen.* (Male, Kigali Ngali)

*Theme 2: The motives of those confessing and asking for forgiveness are questionable*

It will be recalled that the accused were typically expected to make an apology for what they did during the genocide and to ask their victims or victim’s family for forgiveness. There was considerable cynicism about such apologies by some victims, as they were seen as ways of having their imprisonment converted to community service and payment of compensation and not as a reflection of remorse and shame. If victims and/or their families did not feel the confession was genuine, they were disinclined to forgive.

*They believed in truth telling and asking forgiveness [because] they are afraid of living out their lives in prison if they don’t ask for forgiveness. Once they’ve asked for forgiveness in front of the gacaca, they think it’s all over.* (Male, Rubavu)

### *Theme 3: Perpetrators and their families have also suffered*

The families of those in prison went through a number of years of suffering while their member was in prison. This included economic hardship and ostracism (and at times abuse) by victim's families. Some perpetrators said that they had no choice:

*I regret what I did; I am ashamed, but what would you have done if you had been in my place? Either you took part in the massacre or else you were massacred yourself (Male, Kigali Ngali).*

#### **4.5 Reconciliation**

The question asked was 'Do you think that Gacaca has resulted in any reconciliation between people in your community?'

It is clear that, at least at the time of the data collection in 2010, that very little reconciliation had taken place. The efforts of the government – both Gacaca and other – were seen to be trying to force reconciliation but the crimes were considered to be too enormous. The following quotes make the point with both eloquence and poignancy.

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

*I could say that relationships between groups are good, but really we do not meet; we cannot meet after this kind of hatred. (Female, Karongi)*

*The objectives of gacaca is to bring peace and security and reconciliation among Rwandans. There is a difference between peace and security. Today we have security because the government is tough enough, but peace doesn't exist. People do not turn violent because they fear the authorities. (Female, Karongi)*

*This is government-enforced reconciliation. The government forced people to ask for and give forgiveness. No one does it willingly. The government pardoned the killers, not us. (Female, Karongi)*

*There is no peace in Rwanda. Gacaca is practical joke. (Female, Karongi)*

#### **4.6 Summing up**

We could summarise these findings as follows:

Truth. A lot of truth came out, but the Gacaca process was limited in scope and individuals had reasons to lie.

Justice. Opinions were divided according to whether the individual was a victim or offender (or family member thereof).

Forgiveness. The crimes committed were enormous. Some concern that confessions were not genuine.

Reconciliation. Seen as being forced by government. Very little real reconciliation has taken place.

## **CHAPTER 5 : SUMMARY AND CONCLUSIONS**

### **5.1 Introduction**

In section 1.3, the overall aim of this research was stated as being ‘to explore the attitudes and experiences of a small sample of Rwandans to the Gacaca approach to dealing with the legacy of genocide’. Its specific objectives were:

- To explain the situation facing the Rwandan government following the genocide and their decision to use Gacaca as means of providing justice and building reconciliation
- Using secondary sources, to document the Gacaca process, including its challenges, limitations and successes
- To survey the opinions, attitudes and experiences of a sample of Rwandans concerning Gacaca with particular reference to truth, justice and forgiveness and reconciliation.

The first objective was examined in section 1.1 and chapter 2, which showed that the Rwandan government decided to focus on obtaining justice for the atrocities committed during the 100 days of genocide in 1996. Given the numbers of accused and the fact that Western courts were making very limited progress in dealing with them, it decided to use a re-vamped version of traditional courts, which successfully cleared the backlog by mid-2012. It hoped that Gacaca, among other initiatives, would contribute to reconciliation.

The second objective was dealt with in chapter 2, especially sections 2.2.5, 2.3 and 2.5-2.6. These describe the way in why courts were organized and the challenges which they faced. They show that, as opposed to the restorative focus of traditional Gacaca courts, the modern version had strong retributive elements.

In terms of the third objective, the research process was outlined in chapter 3 and the results, presently largely in the form of representative quotes from individuals, came in chapter 4. That chapter showed that considerable truth came out during the Gacaca process in the three communities and that considerable justice occurred. However, Gacaca seemed to have generated

little in terms of forgiveness and reconciliation, given the horrific enormity of the genocide crimes.

## 5.2 Implications

The scale and savagery of the genocide means that it will take generations for recovery to take root and grow. Gacaca was far from perfect but it was a bold attempt to get some justice following the genocide. Based on this research, its outcome in terms of forgiveness and reconciliation are thus far very limited.

Many of the responses quoted in chapter 4 concerned the micro level i.e. they referred to the individuals involved, as victims or perpetrators. There is much less evidence in this study about the macro-level – the way that Hutus and Tutsis see ‘the other’ – which is strongly influenced by the experience of individuals during the genocide as well as other times of inter-ethnic violence. On this point, I am reminded of a point in Daniel Goldhagen’s 1996 book *Hitler’s willing executioners*. While the vast majority of Germans agreed with the Nazi ideology that Jews were evil and sub-human and therefore worthy of extermination, those who actually knew Jewish individuals often liked them and were genuinely sad when they were arrested and sent to concentration camps. The support which many Tutsis received from moderate Hutus also bears testimony to the importance of individuals ‘knowing each other’.

A major sticking point is that the government’s justice efforts were confined to the 1996 genocide. Many respondents – very likely of Hutu origin – spoke with anger about the failure to prosecute the RPF. For example:

*The FDLR will never surrender to the Kagame government because RPF killed our family in Kisangani. Do you know that Hutu people who were killed in DRC are more than Tutsi who were killed in Rwanda?* (Male, Rubavu)

Cori Wielenga reports the following story of an incident in an NGO workshop which points to the need for an understanding that suffering is not confined to one group:

*A Tutsi widow shared her suffering as a result of genocide at great length. Breaking into her story, a Hutu widow then stood up angrily and stated shouting*

*at her, asking her if she thought she was the only one who had suffered and arguing that her suffering was no worse than that of many Hutus. The Tutsi widow was humbled by this and apologized, resulting in an awareness that they shared the same suffering.*

It is this understanding of our shared humanity, she says, which is ‘the starting point of justice that restores and reconciles’ (Wielenga and Harris 2011: 24).

There are institutions apart from the government which can help build this understanding and these are the faith communities to which the vast majority of Rwandans are affiliated. Almost all Moslems, it might be noted, refused to participate in the genocide. We saw in section 2.2.3 that Christian churches often had a very negative role during the genocide, with many of its priests, pastors and members actively engaging in or supporting the genocide. Christian theology provides a strong set of foundations for forgiveness and reconciliation but perhaps, before the churches start preaching these, they need to repent for their actions during the genocide.

## **Appendix 1: Background questions**

Does Gacaca deal with the culture of impunity?

Is Gacaca really a way of granting amnesty o prisoners?

Will be Gacaca be faster and more efficient than existing judicial institution?

Is community service under Gacaca a better punishment than imprisonment?

Will the option of community service result in confessions?

Is compensation paid by perpatrators to victims and/or their families under Gacaca better than imprisonment?

Will Gacaca reduce resentment on the part of victims and/or their families?

Will it create resentment on the part of perpetrators and/or their families?

Does the traditional role of women limit their implication in Gacaca?

Will women be able to confess publicly sexual violence? What will be the retribution over such revelations?

Are defendants who confessed really remorseful? Do they do it in order to have sentence reduction?

Will confessions from defendants add values on reconciliation process?

Will judges be honest and motivated by truth and justice values? Will they be able to work with no fees?

Are witnesses guilty of false testimonies?

Will testimonies divide families?

Do you think that people will testify against their family members?

Do prisoners keep silence to protect family's integrity?

Will victims forgive after Gacaca ends?

Will they be compassionate with accused who are acquitted?

Will acquitted prisoners and their family be welcomed by the community or will they be living in insecurity?

Will the accused who are acquitted lodge a complaint in justice against their accusers and will they receive reparations.

Will coexistence between survivors and release prisoners difficult?

Will Gacaca bring healing?

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