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## An Analysis of the Effectiveness of the Gacaca Court System in Post-Genocide Rwanda

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## Introduction

The genocide that occurred in Rwanda in 1994 was but another sad and violent chapter in the nation's history. In order to understand why the genocide occurred, it is necessary to look at the events in Rwanda's past. Rwanda's pre-colonial history is greatly disputed, and different parties tend to hold differing views, but regardless of the view, it is no disputed fact that Rwanda has been plagued with ethnic divisions since its earliest days as a colony and later as an independent nation.

The need for transitional justice and reconciliation in Rwanda becomes apparent in light of the genocide. In countries like Rwanda, where catastrophic human rights abuses have occurred, systems must be set up in order to redress the abuses that took place. In order for the nation to move forward in unity, it must be able to deal with its past. While means to deal with the genocide and implement the transitional justice necessary for the Rwandan people were developed at both the international and domestic level, due to shortcomings at both levels, another effort needed to be undertaken. In response, the Rwandan government proposed a modern adaptation of the traditional Gacaca tribunal. Traditional Rwandan Gacaca tribunals endeavored to uncover the truth and promote reconciliation between the offending party and the victim in communities where a wrong had been committed. However, problems with such a system under state control became evident as the trials progressed. The Rwandan government implemented the Gacaca courts to promote reconciliation and enact justice following the Rwandan genocide in 1994. However, this approach worked only in theory. Reality has proven the Gacaca Courts to be inadequate in the enactment of long-term reconciliation and nonpartisan justice. Through analyzing the circumstances leading up to the genocide and the implementation of the Gacaca court system to deal with the aftermath, this paper will examine the deep currents of ethnicity, violence, and division and how Rwanda's system of transitional justice system failed to resolve these issues.

## The Road to Genocide

The Rwandan genocide has often been misconstrued as a purely ethnic conflict. A look back upon the history of Rwanda and upon the events leading up to the genocide reveals a much more telling story.<sup>1</sup> Controversy surrounds the nature of the pre-colonial Rwandan state of affairs, but two primary accounts exist with heavy followings. The first account — which is favored by the current Rwandan

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<sup>1</sup>Karen Brounéus, "Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts," *Security Dialogue* 39.1 (2008): 55, doi: 10.1177/0967010607086823.

government — emphasizes the fact that Hutus and Tutsis dwelled together peacefully prior to colonization. This account holds that conflict along ethnic divisions did not occur until Rwanda's years of colonization. Many who hold this view have also suggested that the Hutu-Tutsi division was not purely an ethnic division but rather reflected socioeconomic status. This idea suggests the possibility of mobility between identifying groups.<sup>2</sup> Based upon this view, the Tutsi were historically portrayed as cattle-herders and Hutus as those with cattle herds fewer than ten or as agriculturalists.<sup>3</sup>

The second account emphasizes that conflict existed along ethnic divisions prior to colonization. This account often cites the migratory history of the region with the Tutsis arriving last and imposing their rule over the Hutus.<sup>4</sup> As opposed to the prior account, this account certainly suggests that a difference in ethnicity existed between the Hutus and Tutsis as they migrated from different regions at different times. Regardless of the pre-colonial account held as truth, most scholars agree that colonization had a great impact on dividing the Hutu and Tutsi people along ethnic divisions and played a great role in the ensuing conflict.<sup>5</sup>

The Germans first colonized Rwanda in 1885, declaring their claim at the Conference of Berlin. However, following the end of World War I, Belgium gained control of Germany's colonial holdings in Rwanda. With the Belgian colonization came a solidification of Hutu and Tutsi as ethnic identities. The Belgians implemented a system of identification cards and attempted to use scientific methods in order to differentiate the existing Hutu and Tutsi identities.<sup>6</sup> The Tutsi minority was seen as more fit to rule and the Hutu as more fit to be ruled over. Some scholars believe that this was a tradition dating back to the first days of colonization in which the Tutsi convinced many of the white settlers,

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<sup>2</sup> Allison Corey and Sandra F. Joireman, "Retributive Justice: The Gacaca Courts in Rwanda," *African Affairs* 103 (2004): 74, doi: 10.1093/afraf/adh007; Bret Ingelaere, "The Gacaca Courts in Rwanda," *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (Sweden: International IDEA, 2008), 26, [http://www.idea.int/publications/traditional\\_justice/upload/Chapter\\_2\\_The\\_Gacaca\\_Courts\\_in\\_Rwanda.pdf](http://www.idea.int/publications/traditional_justice/upload/Chapter_2_The_Gacaca_Courts_in_Rwanda.pdf).

<sup>3</sup>Peter Uvin, "Prejudice, Crisis, and Genocide in Rwanda," *African Studies Review* 40.2 (1997): 92, <http://jstor.org/stable/525158>.

<sup>4</sup> Ingelaere, "The Gacaca Courts in Rwanda," 26; Uvin, "Prejudice, Crisis, and Genocide in Rwanda," 93.

<sup>5</sup> Ingelaere, "The Gacaca Courts in Rwanda," 26.

<sup>6</sup> Corey and Joireman, "Retributive Justice," 76; Ingelaere, "The Gacaca Courts in Rwanda," 26; Jacqueline Lewis, "Mass Graves And A Thousand Hills: University Student Perspectives On The Gacaca Courts In Post-Genocide Rwanda," *Inquiry* (University of New Hampshire) (2010): 36, [http://scholars.unh.edu/inquiry\\_2010/10](http://scholars.unh.edu/inquiry_2010/10); Megan M. Westberg, "Rwanda's Use of Transitional Justice After Genocide: The Gacaca Courts and the ICTR," *Kansas Law Review* 59.2 (2011): 334, [http://www.law.ku.edu/sites/law.drupal.ku.edu/files/docs/law\\_review/v59/04-Westberg\\_Final.pdf](http://www.law.ku.edu/sites/law.drupal.ku.edu/files/docs/law_review/v59/04-Westberg_Final.pdf).

known as the Bazungu, of their divine right to rule.<sup>7</sup> Other scholars point to physical characteristics. The Tutsi were typically taller and had physical features, which looked more like the Bazungu colonists, thus creating a kinship and a favored view in the eyes of the colonists. Under colonial rule, the Tutsi minority enjoyed the benefits of rulership, whereas the Hutu often felt the weight of being subjected to a minority rule.<sup>8</sup>

In 1959, the tables began to turn in favor of the Hutu. A movement known as the social revolution or Hutu revolution began to gain ground. Acknowledging the power of the Hutu majority and the precariousness of their situation, the Belgians began to throw their weight behind the Hutus.<sup>9</sup> As a result, Tutsi leaders were thrown out of power, and violence against the former Tutsi leaders and their families became routine. Following the revolution, an independent Rwandan state was formed and Gregoire Kayibanda, a Hutu, became the first president of Rwanda. The conflict between the two groups only grew as the Hutus sought revenge and began killing Tutsis.<sup>10</sup> The Tutsis became limited in both their occupational and educational opportunities due to quotas imposed by the new Hutu government.<sup>11</sup> Many Tutsis fled to surrounding countries but could not return after the violence subsided because of prohibitions from the Rwandan government.<sup>12</sup> In response, young Tutsis in Uganda came together and formed the Rwandese Patriotic Front (RPF). While the Hutu-dominated regime proclaimed freedom from the oppression of minority rule, in reality this regime was just as minority ruled as the last. Instead of a Tutsi minority leading, the Hutu elite led the country, representing an oligarchy rather than a true democracy.<sup>13</sup>

Following the end of the Cold War, the international community faced a heightened demand for democracy; Rwanda was not exempt from these demands.<sup>14</sup> At this time, Rwanda had several political currents flowing within it. The elite in power wished to maintain their rule, the internal opposition pushed for democracy, and the external opposition associated primarily with the RPF sought power through armed opposition.<sup>15</sup> In 1990, Rwanda faced the threat of

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<sup>7</sup> Uvin, "Prejudice, Crisis, and Genocide in Rwanda," 104.

<sup>8</sup> *Ibid.*, 95-96.

<sup>9</sup> Max Rettig, "Gacaca: Truth, Justice, and Reconciliation in Postconflict Rwanda?" *African Studies Review* 51.3 (2008): 29, doi: 10.1353/arw.0.0091; Uvin, "Prejudice, Crisis, and Genocide in Rwanda," 96.

<sup>10</sup> Corey and Joireman, "Retributive Justice," 77; Ingelaere, "The Gacaca Courts in Rwanda," 27.

<sup>11</sup> *Ibid.*, 27; Uvin, "Prejudice, Crisis, and Genocide in Rwanda," 100.

<sup>12</sup> Lewis, "Mass Graves," 36; Rettig, "Gacaca: Truth, Justice, and Reconciliation," 29.

<sup>13</sup> Uvin, "Prejudice, Crisis, and Genocide in Rwanda," 96.

<sup>14</sup> *Ibid.*, 108.

<sup>15</sup> Ingelaere, "The Gacaca Courts in Rwanda," 28.

civil war following an RPF attack from Uganda.<sup>16</sup> After an unsuccessful offensive in 1990, the RPF reached Kigali, the Rwandan capital, in 1993.<sup>17</sup> This offensive sparked peace talks between the Hutus and Tutsis. The Arusha Peace Agreement, signed in August 1993, consented to a multi-party system with a power sharing agreement between the different political movements as well as an integration of the rebel forces, primarily the RPF, into the national military.<sup>18</sup> However, tensions were by no means dissolved. Instead, the Hutus began to make preparations for an escalation in ethnic violence. Extremist Hutus began to organize trained militias and produced propaganda painting the Tutsis in a highly negative manner.<sup>19</sup> The assassination of President Habyarimana on April 6, 1994, instigated the ensuing conflict that would rise to a genocidal status and would be put to a stop only when the RPF again intervened.<sup>20</sup>

The genocide was not purely an ethnic conflict. Instead, many scholars believe that ethnic divisions were exacerbated during the genocide and used in order to justify violence that masked deeper intents.<sup>21</sup> Prior to the outbreak of civil war in 1990, Rwanda faced great economic strain as a series of disappointing harvest seasons led to a huge trade deficit. The current Hutu regime also faced great troubles as the international demands for greater democratization and attacks by the RPF threatened to overthrow political stability. The state sought to unite the Hutu majority in the face of such crises; the Tutsi minority became the perfect scapegoat.<sup>22</sup> First, through propaganda the RPF and extremism became synonymous with every single Tutsi citizen.<sup>23</sup> Suddenly each Tutsi was a threat to national security. Accordingly, the government blamed the economic crisis on a conspiracy by merchants and tradesmen — professions dominated by Tutsis.<sup>24</sup>

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<sup>16</sup> Corey and Joireman, "Retributive Justice," 78; Rettig, "Gacaca: Truth, Justice, and Reconciliation," 29; Uvin, "Prejudice, Crisis, and Genocide in Rwanda," 108; Westberg, "Rwanda's Use of Transitional Justice," 335.

<sup>17</sup> Lewis, "Mass Graves," 36.

<sup>18</sup> Corey and Joireman, "Retributive Justice," 78; Ingelaere, "The Gacaca Courts in Rwanda," 28.

<sup>19</sup> Helen M. Hintjens, "Explaining the 1994 Genocide in Rwanda," *The Journal of Modern African Studies* 37.2 (1999): 246-47,

<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=17709>; Westberg, "Rwanda's Use of Transitional Justice," 335.

<sup>20</sup> Kirsten M. F. Keith, "Justice at the International Criminal Tribunal for Rwanda: Are Criticisms Just?" *Law In Context* 27.1 (2009): 80,

<http://search.informit.com.au/documentSummary;dn=242546368482010;res=IELHSS>; Brounéus, "Truth-Telling as Talking Cure," 56; Corey and Joireman, "Retributive Justice," 79; Ingelaere, "The Gacaca Courts in Rwanda," 29; Lewis, "Mass Graves," 36-37; Westberg, "Rwanda's Use of Transitional Justice," 335.

<sup>21</sup> Hintjens, "Explaining the 1994 Genocide," 242, 247-48.

<sup>22</sup> *Ibid.*, 249, 258, 263.

<sup>23</sup> *Ibid.*, 246; Ingelaere, "The Gacaca Courts in Rwanda," 29; Uvin, "Prejudice, Crisis, and Genocide in Rwanda," 109.

<sup>24</sup> Hintjens, "Explaining the 1994 Genocide," 256-57.

The military preparations against the Tutsi by extremist Hutus now appeared justified in the eyes of the Hutu majority.<sup>25</sup> The negative portrayal of the minority Tutsi united the Hutu masses under the power of the state. The extended power of the state would allow for a quick and efficient process of racial elimination.<sup>26</sup> The genocide was not a senseless ethnic conflict, but rather a move by the state to monopolize its power amongst its people and maintain the status quo of Hutu majority rule.

The Rwandan genocide came to an end in the summer of 1994 after 100 days of brutal killing and the extermination of nearly one million Tutsis and sympathetic Hutus.<sup>27</sup> The Rwandan government and the rest of the international community were left with the question of how those guilty of engaging in the genocide should be punished. The implementation of justice for the victims would be an integral part of rebuilding the post-conflict country.

### **Transitional Justice on the International and Domestic Level**

States set new precedents for future generations with the ways in which they deal with past conflict. Justice must be served in order to prevent future episodes, but justice must be balanced with the needs of the victims. States must learn to balance law with concern for human rights; this is imperative for states, like Rwanda, with a history of human rights abuses. Although this event occurred in the past, the nation still feels the effects of the conflict.<sup>28</sup>

The United Nations Security Council established the International Criminal Tribunal for Rwanda (ICTR) in the fall of 1994 following the end of the genocide. The goal of the tribunal was to try those guilty of crimes of genocide and other acts that violate international law.<sup>29</sup> The tribunal has sought to ensure that violations of the most basic human rights do not go overlooked.<sup>30</sup> While the

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<sup>25</sup> Uvin, "Prejudice, Crisis, and Genocide in Rwanda," 110-11.

<sup>26</sup> Hintjens, "Explaining the 1994 Genocide," 249.

<sup>27</sup> Timothy Longman, "Trying Times for Rwanda," *Harvard International Review* 32.2 (2010): 48, <http://hir.harvard.edu/law-of-the-land/trying-times-for-rwanda>; Keith, "Justice at the International Criminal Tribunal," 78; Lewis, "Mass Graves," 35, 37.

<sup>28</sup> Michael Humphrey, "International Intervention, Justice and National Reconciliation: The Role of the ICTY and ICTR in Bosnia and Rwanda," *Journal of Human Rights* 2.4 (2003): 495, doi: 10.1080/1475483032000137084; Jeremy Sarkin, "Promoting Justice, Truth And Reconciliation In Transitional Societies: Evaluating Rwanda's Approach In The New Millennium Of Using Community Based Gacaca Tribunals To Deal With The Past," *International Law FORUM Du Droit International* 2 (2000): 112-16, doi: 10.1163/15718040020962537.

<sup>29</sup> Corey and Joireman, "Retributive Justice," 80; Keith, "Justice at the International Criminal Tribunal," 79; Longman, "Trying Times for Rwanda," 48; Westberg, "Rwanda's Use of Transitional Justice," 341-42.

<sup>30</sup> Humphrey, "International Intervention," 495-98.

aim of the tribunal is noble indeed, it has not effectively connected itself to the Rwandan people. Many Rwandans look upon the tribunal with doubts and disinterest. They view the tribunal as being distant from them both by proximity — as it is located in Arusha, Tanzania — and by the Western justice that it promotes rather than the reconciliation that the Rwandans desire.<sup>31</sup> The Rwandan public is also not widely informed as to the nature and purpose of the ICTR, leaving them ignorant of and indifferent to its efforts.<sup>32</sup>

Politics also play a great role in the execution of justice within the ICTR. Because the tribunal is located outside of Rwanda, the tribunal relies upon the cooperation of the Rwandan government in matters concerning both the witnesses and the accused. Unfortunately, this has led to one of the tribunal's greatest criticisms. Many critics of the tribunal, especially Hutu critics, point to the tribunal's failure to try crimes committed by the RPF throughout the course of the Rwandan conflict. Many innocent civilians fell at the hand of the RPF both before and after the genocide broke out.<sup>33</sup> Prosecution of the RPF is not outside the bounds of the jurisdiction of the ICTR.<sup>34</sup> Rather, the ICTR has not proceeded with the prosecution of RPF crimes due to the nature of its relationship with the Rwandan government. An exploration into the matters of the RPF — of which the current Rwandan president was a member — has led to an end in cooperation in the past. By means of necessity, the ICTR needs to keep the channels of cooperation open between itself and the Rwandan government and thus cannot explore the crimes of the RPF.<sup>35</sup> Other criticisms of the ICTR include its failure to send down sentences expeditiously as well as the failure of the ICTR to rule on sexual crimes committed during the genocide.<sup>36</sup>

While the ICTR has not brought about the reconciliation that Rwandans desire, the capacity of the Rwandan national judicial system to deal with the deluge of criminals and cases related to the genocide has been entirely lacking in this area as well. Detainees are kept in crowded prisons, and often due process rights are overlooked. Many Hutus view this faulty system of justice as the Tutsi version of victor's justice.<sup>37</sup> Truth is an integral part of the reconciliation process. Truth allows for dialogue to occur and for recompense to be made. Often a country's pursuit of justice can obscure the lines of truth and overlook the needs of the victimized. The Rwandan government has been so consumed with the

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<sup>31</sup> Ingelaere, "The Gacaca Courts in Rwanda," 45; Westberg, "Rwanda's Use of Transitional Justice," 359-61.

<sup>32</sup> Longman, "Trying Times for Rwanda," 50.

<sup>33</sup> Corey and Joireman, "Retributive Justice," 78-80.

<sup>34</sup> Keith, "Justice at the International Criminal Tribunal," 80-81.

<sup>35</sup> *Ibid.*, 83-84.

<sup>36</sup> *Ibid.*, 86, 92-93.

<sup>37</sup> Sarkin, "Promoting Justice, Truth, and Reconciliation," 112-15.

duties of implementing justice that reconciliation has often been looked upon as a secondary goal.<sup>38</sup>

Outside groups have made recommendations for an independent commission whose sole focus would be in regards to reconciliation, but when criminal proceedings began, the Rwandan government simply did not have the ability to make this a feasible option. If a reconciliation commission were to be put in place, it would need to be recognized by the Rwandan people as a legitimate source of authority. Its primary goal should be to pursue the truth and promote healing for victims. Each victim's story is important and needs to be heard in order for the healing process to begin. However, if the pursuit of truth is done in the wrong way, it can reopen wounds and cause more harm than good. In order for the country to move on as a unified nation, the government of Rwanda must find a means of reconciliation that can be successful. The remnants of the ethnic conflict not only affect the political structure of the country, but also the economic structure and activities.<sup>39</sup>

### The Gacaca Court System

One way in which the government of Rwanda sought to promote reconciliation and pursue truth alongside justice was through its implementation of the Gacaca court system. In traditional Gacaca, elderly men of the community comprised the judge's panel with the impartial implementation of justice as the goal.<sup>40</sup> The scope of the court dealt with property feuds and any other domestic dispute plaguing the community. A large part of traditional Gacaca rested in reconciliation and the restoration of balance back in the community—including the reintegration of the perpetrator into community life.<sup>41</sup>

The primary goals of the modern Gacaca system included the acceleration of prosecutions, the punishment of the guilty, freedom for the victims, the establishment of the truth as well as reconciliation between the Hutus and Tutsis.<sup>42</sup> The modern Gacaca system, under the power of the state, was a highly

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<sup>38</sup> Ibid., 115-18.

<sup>39</sup> Ibid., 115-18.

<sup>40</sup> Ibid., 119.

<sup>41</sup> Timothy Longman, "An Assessment of Rwanda's Gacaca Courts," *Peace Review: A Journal of Social Justice* 21.3 (2009): 306, doi: 10.1080/10402650903099369; Corey and Johnson, "Retributive Justice," 81-82; Ingelaere "The Gacaca Courts in Rwanda," 33; Longman, "Trying Times for Rwanda," 49; Rettig, "Gacaca: Truth, Justice, and Reconciliation," 30; Westberg, "Rwanda's Use of Transitional Justice," 333-34.

<sup>42</sup> Brounéus, "Truth-Telling as Talking Cure," 56; Lewis, "Mass Graves," 37; Longman, "An Assessment of Rwanda's Gacaca Courts," 304; Rettig, "Gacaca: Truth, Justice, and Reconciliation," 25-26; Westberg, "Rwanda's Use of Transitional Justice," 337.



politicized system broken into several different levels and phases designed to alleviate the strain on the national court and prison system.<sup>43</sup> The Gacaca system proposed by the government encapsulated a pyramid-like structure with the Rwandan Supreme Court at the top. The levels of the Gacaca courts included cell, sector, and appeals; each progressing level dealt with crimes in a higher categorization than the previous level.<sup>44</sup> The Gacaca tribunals tried crimes that were placed in three categories. The first category included those who had planned the genocide, torturers, rapists, known murderers, and those who committed dehumanizing acts on dead bodies. The second category included those who had committed murder or committed acts with the intent of killing their victim and those who committed violent acts without the intent to kill. The third category was limited to those who committed property offenses. The first phase of Gacaca included an information-gathering session in each of the communities affected by the genocide. These sessions documented those affected by the genocide, the testimonies of witnesses, and those accused of crimes. Following the information-gathering sessions, the crimes of the accused were then placed into the categorization system designed by the government; this determined at what level the accused would be tried. Finally, the trials began in the communities affected by the genocide. After hearing the testimonies of the witnesses, the judges would meet together and determine the verdict against the accused.<sup>45</sup>

The Gacaca tribunal system prosecuted crimes — those categorized as genocidal crimes or crimes against humanity — committed between October 1, 1990, and December 31, 1994.<sup>46</sup> The presiding judges of the tribunals were elected by the community and went through a few days of training before assuming their posts; prior legal experience or training was not a prerequisite to being elected as a judge.<sup>47</sup> Throughout the entire trial process, the community was encouraged to speak out and participate in order to best flush out the truth of the events that had occurred during the prior period of unrest and violence.<sup>48</sup> Eventually, participation became mandatory, and those who refused to attend the trials could face fines.<sup>49</sup> The Gacaca courts aimed at reconciliation and often gave lesser sentences to perpetrators who accepted the responsibility of their actions

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<sup>43</sup> Ingelaere, “The Gacaca Courts in Rwanda,” 35; Rettig, “Gacaca: Truth, Justice, and Reconciliation,” 32-33.

<sup>44</sup> *Ibid.*, 31.

<sup>45</sup> Brounéus, “Truth-Telling as Talking Cure,” 57; Ingelaere, “The Gacaca Courts in Rwanda,” 39-42; Longman, “An Assessment of Rwanda’s Gacaca Courts,” 308; Rettig, “Gacaca: Truth, Justice, and Reconciliation,” 31-32; Westberg, “Rwanda’s Use of Transitional Justice,” 338-40.

<sup>46</sup> Ingelaere, “The Gacaca Courts in Rwanda,” 38.

<sup>47</sup> Rettig, “Gacaca: Truth, Justice, and Reconciliation,” 25.

<sup>48</sup> Corey and Joireman, “Retributive Justice,” 83.

<sup>49</sup> Rettig, “Gacaca: Truth, Justice, and Reconciliation,” 37.

and made efforts to seek forgiveness from their victims.<sup>50</sup> Convictions also required no physical evidence and relied solely on witness testimony.<sup>51</sup> Punishments ranged anywhere from community service to life in prison. Only the official state courts could hand down death sentences until Rwanda abolished the death penalty in 2007.<sup>52</sup>

### **The Strengths and Weaknesses of the Gacaca Court System**

Controversy has surrounded the Gacaca courts. Many Rwandans believe in the rehabilitating power of the courts and the type of justice that is served there. However, many others — Rwandans and non-Rwandans alike — have found many flaws inherent in the Gacaca system, which debilitate its implementation of both reconciliation and justice nationwide.

The Gacaca court system has many strengths, and proponents of the system point to these strengths as fulfillment of the system's purpose. First of all, the Gacaca court system has encouraged greater transparency of proceedings with the public as witness. Hidden grievances and resentments have been brought to the surface in order to be approached in such a way that promotes truth and dialogue between victims and perpetrators. Dialogue promotes understanding and acts as a useful tool for educating the next generation in order to avoid another violent tragedy.<sup>53</sup> Individuals are also able to gain the truth about the circumstances surrounding their loved ones' deaths.<sup>54</sup> In addition, perpetrators have been reintegrated into society through dialogue with the victims and the community service often required of them.<sup>55</sup> More so than the ICTR, the Gacaca court system has had greater success in connecting the Rwandan people with the justice that it hands down as well as integrating them into the means by which justice comes about. As a result, the Rwandan people much prefer the Gacaca system to the ICTR or even the national court system.<sup>56</sup> The Gacaca system also provides an economic benefit to the Rwandan nation. The high number of incarcerated prisoners awaiting trial in national prisons serves as an economic drain on the country. The Gacaca courts are able to try cases at a greater speed

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<sup>50</sup> Lewis, "Mass Graves," 37; Westberg, "Rwanda's Use of Transitional Justice," 337.

<sup>51</sup> Corey and Joireman, "Retributive Justice," 83.

<sup>52</sup> Westberg, "Rwanda's Use of Transitional Justice," 340.

<sup>53</sup> Longman, "An Assessment of Rwanda's Gacaca Courts," 308; Westberg, "Rwanda's Use of Transitional Justice," 349.

<sup>54</sup> Longman, "An Assessment of Rwanda's Gacaca Courts," 308; Westberg, "Rwanda's Use of Transitional Justice," 352.

<sup>55</sup> *Ibid.*, 352.

<sup>56</sup> Ingelaere, "The Gacaca Courts in Rwanda," 51.

than the international and national court systems. By speeding up the backlog of cases, the Gacaca system reduces this strain on the country's economy.<sup>57</sup>

Along with the strengths of the Gacaca system come weaknesses that appear to be inherent in the system. The traditional Rwandan concept of justice comes from the word *utabera* — a word that portrays an idea of social reconstruction.<sup>58</sup> The Gacaca system in many Rwandan eyes has not lived up to this traditional concept of restoring the social balance but rather has sought to administer retributive justice. Many have come to see the Gacaca as an opportunity to exact revenge on enemies or to intimidate others with the threat of accusation.<sup>59</sup> Instead of instilling a sense of truth and reconciliation, the Gacaca has stirred up feelings of fear and intimidation.

Elements of the Gacaca system reveal a deeply rooted sense of governmental control in the Gacaca proceedings that undermines restorative efforts within the communities. Participation in Gacaca became mandatory — punishable by fines — shortly after its conception, revealing the coercion of reluctant citizens into something that the government deemed necessary.<sup>60</sup> Additionally, the community service prescribed to convicted perpetrators often is not done within the community where the crime was committed but rather done in the form of public service projects. This portrays the idea that officials may be using the system in order to benefit government efforts rather than the communities affected by the genocide.<sup>61</sup> Another area of state control within Gacaca proceedings has been revealed through the charges brought up against critics of the post-genocide regime. Many believe that the Gacaca system has become an avenue for the government to eliminate those who speak up against the current regime.<sup>62</sup>

The process by which judges were selected to serve on the judging panel has also opened an avenue of complaint for critics of the system. Legal experience and knowledge of the legal system were not prerequisites to becoming a judge. Instead, the populace elected the judges based upon reputation.<sup>63</sup> The judges are critical to the success of the Gacaca system and the faulty discernment of just one

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<sup>57</sup> Ibid., 52; Rettig, "Gacaca: Truth, Justice, and Reconciliation," 35; Westberg, "Rwanda's Use of Transitional Justice," 347-48.

<sup>58</sup> Longman, "Trying Times for Rwanda," 40, 52.

<sup>59</sup> Longman, "An Assessment of Rwanda's Gacaca Courts," 310; Rettig, "Gacaca: Truth, Justice, and Reconciliation," 39.

<sup>60</sup> Ingelaere, "The Gacaca Courts in Rwanda," 55; Longman, "An Assessment of Rwanda's Gacaca Courts," 304; Longman, "Trying Times for Rwanda," 51.

<sup>61</sup> Ibid., 52.

<sup>62</sup> Longman, "An Assessment of Rwanda's Gacaca Courts," 309; Westberg, "Rwanda's Use of Transitional Justice," 356.

<sup>63</sup> Rettig, "Gacaca: Truth, Justice, and Reconciliation," 26; Westerg, "Rwanda's Use of Transitional Justice," 354-55.

judge can compromise the entire system.<sup>64</sup> Unfortunately, some judges themselves have been convicted of genocidal crimes.<sup>65</sup> Additionally, judges receive little or no compensation for their work and have a greater propensity for accepting bribes, thus undermining the authority of the Gacaca proceedings.<sup>66</sup> Many Western critics also point to the lack of due process rights for the accused as an argument against Gacaca.<sup>67</sup> Defendants have no legal counsel, and convictions are not based upon physical evidence, but rather upon the testimony of witnesses. Because of the lack of accountability, participants in Gacaca are able to bear false witness against the accused.<sup>68</sup> In order to receive lesser sentences, the accused often wrongfully confess to crimes they did not commit in order to avoid the risk of being convicted for a crime that demands a harsher sentence. This undermines the pursuit and discovery of truth within the Gacaca proceedings.<sup>69</sup> In addition, because the proceedings take place in many rural communities, the accused can flee prosecution with ease — escaping the justice their actions demand.<sup>70</sup>

A major Hutu criticism of the Gacaca system rests in the fact that only genocidal crimes have been addressed, leaving out the crimes committed by the RPF against the Hutus both before and after the genocide.<sup>71</sup> Unfortunately, this leads many Hutus to view the form of justice handed down by the Gacaca as one-sided and an example of victor's justice.<sup>72</sup> Because the Hutus still have grievances weighing upon them, true reconciliation is not possible. Until the uninhibited dialogue of all crimes committed is possible, many Hutu will hold onto their resentments, thus impeding the ability of the Rwandan nation to move past its violent history. The Gacaca system has also been viewed as reinforcing ethnic divisions rather than reconciling them. Because almost an entire generation of Hutu men has been associated with the crimes of the genocide, an idea of the collective guilt of all Hutus is perpetuated rather than individuating guilt based upon individual actions. Had the Tutsi crimes against the Hutu been a consideration in the Gacaca proceedings alongside the crimes committed during

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<sup>64</sup> Sarkin, "Promoting Justice, Truth, and Reconciliation," 119-20; Westberg, "Rwanda's Use of Transitional Justice," 354.

<sup>65</sup> Longman, "Trying Times for Rwanda," 52.

<sup>66</sup> Lewis, "Mass Graves," 37.

<sup>67</sup> Corey and Joireman, "Retributive Justice," 84; Rettig, "Gacaca: Truth, Justice, and Reconciliation," 26; Westberg, "Rwanda's Use of Transitional Justice," 355.

<sup>68</sup> Rettig, "Gacaca: Truth, Justice, and Reconciliation," 39.

<sup>69</sup> *Ibid.*, 39; Westberg, "Rwanda's Use of Transitional Justice," 356.

<sup>70</sup> Westberg, "Rwanda's Use of Transitional Justice," 354.

<sup>71</sup> Rettig, "Gacaca: Truth, Justice, and Reconciliation," 26, 40.

<sup>72</sup> Lewis, "Mass Graves," 37-38; Longman, "Trying Times for Rwanda," 51.

the actual genocide, this idea would most likely not have been perpetuated, making true reconciliation a more obtainable goal.<sup>73</sup>

Another weakness of the Gacaca system also lies in the possible safety issues and psychological side effects associated with witnessing in a Gacaca trial. Unfortunately, many witnesses have been barred from telling their story because of intimidation or coercion from the perpetrator's family or simply because they felt their physical safety would be jeopardized by witnessing in a trial.<sup>74</sup> A series of interviews done by Karen Brouneus at a widow's association in Kigali provides a more in-depth analysis of both the issues of personal safety and psychological side effects suffered by witnesses in the Gacaca trials. She interviewed sixteen women ranging from ages 27 to 67.<sup>75</sup> The interviews revealed that each woman began to be harassed and threatened after giving testimony at a Gacaca trial. One woman described how not only her physical safety was threatened but also her livelihood. Her harassers brought their cows onto her land to graze and subsequently destroyed her crops. During the trials, many of the witnesses are harassed verbally by the shouts and contributions of those in attendance. One woman revealed that she now longer attends Gacaca because her sister was killed after testifying at a trial. The women also revealed the psychological side effects associated with testifying through their interviews. Many described the horror of reliving their experiences as they testified in court. Many of the women suffered physical trauma such as uncontrollable shaking, crying, and fainting while on the witness stand. The women are left vulnerable as a result of their testifying, and many women confessed to feeling lonely and isolated from the rest of their community.<sup>76</sup> Sadly, these women who should feel comforted and relieved as their testimonies help to enact justice in the community instead are left feeling lonely, isolated, and fearful.

### **A Practical Perspective**

Through all the praises and criticisms of the Gacaca court system, the opinion that matters most is that of the Rwandan people. Polls taken early in the 2000s presented a rather positive outlook on the Gacaca system from the Rwandan

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<sup>73</sup> Corey and Joireman, "Retributive Justice," 86-87; Ingelaere, "The Gacaca Courts in Rwanda," 54, 56-57; Longman, "An Assessment of Rwanda's Gacaca Courts," 309; Longman, "Trying Times for Rwanda," 52.

<sup>74</sup> Corey and Joireman, "Retributive Justice," 85; Longman, "An Assessment of Rwanda's Gacaca Courts," 311.

<sup>75</sup> Brouneus, "Truth-Telling as Talking Cure," 63-64.

<sup>76</sup> *Ibid.*, 66-70.

population; however, it is imperative to look at more recent opinions.<sup>77</sup> Jacqueline Lewis, an undergraduate researcher with the University of New Hampshire, did precisely that in a study undertaken at the National University of Rwanda.

Only a small percentage of the Rwandan population pursues higher education. Thus, the current university students are the future of leadership within their country. Lewis interviewed thirty-two students at the National University of Rwanda in order to gain insight into this young generation's thoughts about the form of justice carried out in the Gacaca courts as well as the future of the conflict-ridden country. Through a process of asking pointed questions, Lewis was able to determine that approximately twenty of the students were Tutsi and nine were Hutu, leaving three students unidentified in regard to ethnicity.<sup>78</sup>

Overall, both the Hutu and Tutsi students had similar views on the Gacaca courts. When asked about the general characteristics of the Gacaca courts in relation to effectiveness, the responses were positive and hopeful. Many of the students wholeheartedly believed in the mission of the Gacaca courts. However, when asked more specific and pointed questions about the effectiveness of the courts, the students began to waver in the confidence they had previously shown in the courts. A few students talked about the room for corruption within the Gacaca court systems. Others mentioned that the perpetrators' families often suffered the most. Ultimately, the students agreed with the goals of the Gacaca court, but saw a disparity between the goal and what actually came about as a result of Gacaca.<sup>79</sup>

## Conclusion

The Rwandan people have been plagued by a history of ethnic division and violence playing upon them. Regardless of the directly precipitating causes and circumstances leading up to the genocide, the situation was most certainly exacerbated by the pre-existing ethnic definitions of Hutu and Tutsi. The crimes committed during the Rwandan genocide demand justice, but there is also a strong need for reconciliation within the conflict-ridden country. If the country is to move on and leave its violent past behind, it must move on as a country of unified people. The Gacaca court system seeks to promote both justice and reconciliation, but it is by no means a perfect system as it lends itself to the possibility of corruption, further suffering endured by the victims, and partisan

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<sup>77</sup> Longman, "An Assessment of Rwanda's Gacaca Courts," 307; Rettig, "Gacaca: Truth, Justice, and Reconciliation," 26-27.

<sup>78</sup> Lewis, "Mass Graves," 38-39.

<sup>79</sup> *Ibid.*, 39-41.

justice. Nor does the Gacaca system uphold the message of truth and reconciliation that it claims to pursue.

The many shortcomings of the Gacaca system have managed to maintain the ethnic divide between Hutus and Tutsis rather than eradicating it. The current generation shows a strong desire to move on from the past and embrace a unified Rwanda, but a country that has endured divisive civil war cannot simply receive a taste of the antidote and then be completely cured. While the Gacaca courts and the criminal proceedings that took place in Rwanda were a step in the right direction, these efforts simply were not enough to erase the stain of the genocide in Rwanda. The truth brought forth by the Gacaca trials is one that reflects only half of the story and was cultivated in an environment of fear and government intervention. In order for true reconciliation to begin, the dialogue that began during the process of Gacaca must continue under a supervisor independent from the government. People must be able to express themselves without fearing the repercussions of their story. An objective truth about the pre-genocide and genocide occurrences must be made public knowledge in order for Rwanda to move on.

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