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*When Combatants Become Judges: The Role of Ex-Combatants in Gacaca Courts and its affect on the Reintegration and Reconciliation Processes In Rwanda.*

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## Abstract

When the Rwandan Patriotic Front (RPF) took power in Rwanda in July 2004 a country in ruins faced them. The genocide culminated in an estimated 800,000 dead, 130,000 detainees in the national prison system, 2,000,000 Rwandan refugees, 700,000 returning Rwandan expatriates and 650,000 alleged participants in the genocide<sup>i</sup>. Government structures had been destroyed, property looted, the economy bankrupt and infrastructure including bridges, roads, schools and hospitals decimated<sup>ii</sup>. The judicial system, significant in post-conflict reconstruction efforts, in particular suffered enormous damage. Much of the physical infrastructure of the system – police stations, prisons and courts – were destroyed but more importantly, a large number of lawyers, judges and prosecutors were killed or exiled due, in part, to the genocidal policy of targeting Tutsi and Moderate Hutu elites<sup>iii</sup>. Indeed, in November 1994 there were 244 judges, 12 prosecutors and 137 other supporting staff (registrars/secretaries) compared to 758, 70 and 631 respectively before 1994<sup>iv</sup>, thus presenting a significant challenge to the reconstruction of Rwanda.

In November 1994, UN Security Council Resolution 955 established the International Criminal Tribunal for Rwanda (ICTR) in order to prosecute those “*responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states between 1 January 1994 and 31 December 1994*”<sup>v</sup>. Additional to the ICTR, the Government of Rwanda (GoR), in 1996, promulgated Organic Law No. 08/96 establishing: specialised chambers for genocide crimes in the civil and military courts; confession procedure and guilty plea for genocide suspects; and categorisation of genocide defendants. However, with the ICTR concentrating on Category 1 defendants, those engaged in planning, organising, instigating and supervising the genocide, and the diminished ability of classical courts to deal with the caseload of defendants it was recognised that it would require over 200 years to try the cases of those in detention<sup>vi</sup>. In order to overcome this problem, and to address the demands of the Rwandan population for justice and encourage unity and reconciliation, the GoR established the Gacaca court system in 2002. The Gacaca system has four main aims of: revealing the truth; speeding up genocide trials; ending the culture of impunity; and reconciling Rwandans.

This paper examines the effects of the Gacaca courts on the reconciliation process in Rwanda, specifically focusing on the role of ex-combatants in the Gacaca system. Ex-combatants have increasingly become involved in the Gacaca system through their reintegration into the community and have therefore been influential in the system and any subsequent effects it has had on the reconciliation process.

## Context, Reconciliation and Transitional Justice

### *Context*

With the changing nature of conflict from an international focus to that of civil conflict over recent decades<sup>vii</sup> we have been witness to a changing nature in the way conflicts are fought. Increasingly civil conflicts have resulted in a dramatic escalation in civilian deaths from 10% in the early 20<sup>th</sup> Century to 90% in the 1990's<sup>viii</sup>. Moreover, civil conflict in today's world is characterised by a distinct lack of respect for human life or dignity with mass rape, mutilation and murder widespread, which has the effect of “*undermining interpersonal and communal group trust, destroying the norms and values that underlie cooperation and collective action for the common good, and increasing the likelihood of communal strife*” thus impeding “*communal and state ability to recover after hostilities cease*”<sup>ix</sup>. Against this backdrop States emerge from civil conflict and begin the post-conflict reconstruction process, attempting to repair the decimated social fabric of society and reconcile previously conflicting parties, including victims and perpetrators. It is within this environment that Transitional Justice is situated.

### *Reconciliation*

When considering reconciliation within a post-conflict environment (PCE) many questions arise as to the benefits of certain aspects of the reconciliation process. For instance, *is there a trade off between making peace and pursuing justice? Does the truth heal? Is a reconciled society possible or desirable after divisive conflict?* In exploring these questions it becomes apparent that there are a number of reasons why reconciliation should be pursued. At the very least, it engenders a deeper understanding of the complexities and challenges posed by the reconciliation process.

A recurrent problem faced by scholars and practitioners of reconciliation is the potential for a perceived trade off between peace and justice. This occurs due to the apparent need to forgo some degree of justice in order to achieve peace. As Baker states:

*Should peace be sought at any price to end the bloodshed, even if power-sharing arrangements fail to uphold basic human rights and democratic principles? Or should the objective be a democratic peace that respects human rights, a goal that might prolong the fighting and risk more atrocities in the time that it takes to reach a negotiated solution?*<sup>x</sup>

The dilemma here lies not so much in the moral or ethical questions that may arise out of the situation but in the pragmatic veracity that if a political settlement is considered unjust it will not be supported. If the pursuit of justice is considered by the perpetrators to be too dogmatic there may be little incentive for them to enter or remain in negotiations or the peacemaking process. Conversely, if the victims deem the degree of justice sought insufficient their ability to accept the settlement will diminish. Is it possible for individuals and communities to engage in collective amnesia? Is it a realistic assumption that individuals and community can forgo the natural desire for vengeance? Addressing the later question Shriver Jr. places emphasis on the need for the restoration of civil society in order to break the cycle of revenge; *“When murder is massive, as in state-sponsored violence, the case against revenge hinges on strategies for the rescue of civil society. Nothing eats away at the ‘glue’ of civic order so surely as cycles of escalating revenge and counterrevenge. The question often is: Which side will take a first step to interrupt the cycle?”*<sup>xi</sup>.

Whilst the strengthening of civil society is indeed important in order to break the cycle of revenge and counterrevenge it is arguable that this is not a sufficient condition. Individuals and communities may be able to quell their desire for vengeance but can they be expected not to seek justice? Smith argues that retributive justice, that is, justice that is based on retaliation for the crime, is in effect another form of vengeance and that there is a distinct need for restorative justice which, *“in contrast to conventional forms of retaliation or retributive justice, seeks to rectify not only violations of law perpetrated by offenders against their victims, but also the larger social relations that are impaired by such violations”*<sup>xii</sup>. The importance of restorative justice is also accentuated by Shriver Jr. who argues that a balance must be struck between the punishment of perpetrators and *“a justice that promises a new measure of peace”*<sup>xiii</sup>.

Restorative justice offers a balance between seeking a dogmatic, retributive justice and allowing perpetrators to ‘get away with’ their crimes that will be more likely to lead to a mutually acceptable political settlement engaging both sides of the conflict. A vital component of this settlement is the process of truth telling and as such the issue of amnesia becomes redundant. However, although it is apparent that truth is instrumental to the establishment of justice, it is not as apparent that truth actually heals. In fact, *“in the process of national reconciliation it is those who have suffered most, the victims, who are usually asked to make the greatest efforts to reconcile. It is their forgiveness that puts the past to rest. Victims are asked to exchange the recognition of their pain, and its origins, for their rights to justice”*<sup>xiv</sup>. While some claim that ‘revealing is healing’ and that the process of truth-telling throughout the judicial procedure does

Richard Bowd  
as much for the victims in terms of their individual healing process as it does for the establishment of justice<sup>xv</sup> the contrary argument highlights the fact that the process of truth-telling is inherently painful and problematic. As Hayes states: “*Just revealing is not just healing. It depends on how we reveal, the context of the revealing, and what it is we are revealing*”<sup>xvi</sup>. There is therefore, a need to contextualise the process of truth telling within the social, political and cultural environments in which the conflict took place but also in which the reconciliation process is situated<sup>xvii</sup>.

### *Transitional Justice*

Transitional Justice brings together retributive and restorative justice in an attempt heal social divisions, mitigate the justice/peace dilemma and create a justice system capable of steering a State through the transition from political violence or civil war to peace and stability. More specifically, “*Transitional Justice refers to the short-term and often temporary judicial and non-judicial mechanisms and processes that address the legacy of human rights abuses and violence during society’s transition away from conflict or authoritarian rule*”<sup>xviii</sup>. As such a Transition Justice system can be seen as a vital component of the reconciliation process. Due to the highly individualised context of a State emerging from political violence of civil war it is paramount that the Transitional Justice system developed is responsive to the needs of that State and its citizens. It is then crucial that such a system is flexible yet clear in its approach; it must be flexible enough to respond to existing and emerging needs of its beneficiaries whilst maintaining focus on its aims and objectives. The architects of a Transitional Justice system need to take advantage of the many mechanisms available to them<sup>xix</sup> and develop a tailor-made system that best meets the identified and predicted needs of the State. This may include the strengthening of the national court system or the introduction of “*a variety of different practices, including apologies, restitution, and acknowledgments of harm and injury, as well as to other efforts to provide healing and reintegration of offenders into their communities, with or without additional punishment*”<sup>xx</sup>.

Critical to the design of such a system is a context specific approach that takes into account the pre-conflict society; the underlying structural, political, economic/social, and cultural causes and triggers of the conflict<sup>xxi</sup>; the dynamics of the conflict<sup>xxii</sup>; and the PCE. These factors are important in the design of a Transitional Justice system for a number of reasons. First, a consideration of the pre-conflict society enables an understanding of the pre-existing legal system grounded in its cultural and historical relevancy, which can be important for identifying possible factors contributing structural and political causes of the conflict, and may provide a deeper knowledge of desirable directions a transitional and post-transitional justice system may take. Second, an analysis of the causes of the conflict endows us with an understanding as to how the

Richard Bowd pre-existing legal system may have either contributed to the outbreak of conflict or failed to prevent it, and how the transitional justice system may ameliorate such divisions and contribute to the post-conflict reconstruction effort. Third, by investigating the dynamics of the conflict we have a better comprehension of the way in which the conflict was pursued and are able to design a system that as best as possible addresses psychosocial issues arising from the conflict through restoring and protecting human rights, and safeguards itself from potential threats to its effectiveness and scope. Fourth, taking into account the PCE provides a clearer picture of the climate in which a Transitional Justice system will operate and thus develops our understanding of not only the initial structures that are required for such a climate but also enables us to identify potential problems or possibilities and to subsequently incorporate flexibility into the system. By taking a context specific approach it is possible to ground the fundamental principles of a legal system within the transitional environmental in which it is operating thus constructing the necessary foundations to be able to effectively endure the transitional period and emerge as a stable legal system that is capable of functioning in the post PCE. In order to do this, however, it can be argued that a Transitional Justice system should be based upon key tenets regardless of context.

Essentially Transitional Justice should encompass a set of tools or approaches that coalesce to achieve eight distinct goals: “addressing, and attempting to heal, divisions in society that arise as a result of human rights violations; bringing closure and healing the wounds of individuals and society, particularly through ‘truth-telling’; providing justice to victims and accountability for perpetrators; creating an accurate historical record for society; restoring the rule of law; reforming institutions to promote democratization and human rights; ensuring that human rights violations are repeated; and, promoting co-existence and sustainable peace”<sup>xxiii</sup>. Therefore, although there may be extremely strong claims for a retributive element, a transitional justice system in which the restorative is emphasised is arguably the most effective in terms of achieving these goals and providing the flexibility required when taking the context specific approach. Indeed, it could be argued that only a Transitional Justice system that prioritises restorative justice can achieve these goals.

### **Transitional Justice in Rwanda: The ICTR, National Courts and Gacaca**

#### *Transitional Justice Challenges*

At the end of the genocide Rwanda faced enormous challenges to come to terms with the events of those 100 days, the preceding four-year civil war and decades of intermittent political oppression and to rebuild. Indeed, “*The government of national unity inherited a deeply scarred*

Richard Bowd  
*nation where trust within and between communities had been replaced by fear and betrayal, whose economy had ground to a complete halt, where social services were not functioning, and public confidence in the state had been shattered...It was with these enormous challenges that the Government of National Unity set about rebuilding the social, political and economic fabric of Rwanda*<sup>xxxiv</sup>. As previously stated, in a PCE the legal system plays a pivotal role not only in the establishing of security but also the provision and protection of human rights and the engendering of reconciliation. However the Rwandan legal system had been decimated throughout the course of the war and the genocide. In terms of physical infrastructure the legal system had been devastated with police stations, prisons and courts having been completely or partially destroyed and no equipment or resources available<sup>xxxv</sup>. However, the most significant problem faced by the Rwandan Government in terms of pursuing justice was the decimation of legal personnel through the genocidal policy of targeting Tutsi and moderate Hutu elites<sup>xxxvi</sup> which resulted in the mass slaughter or exodus of lawyers, judges and prosecutors to the extent that in November 1994 there were 244 judges, 12 prosecutors and 137 other supporting staff (registrars/secretaries) compared to 758, 70 and 631 respectively prior to the genocide of 1994<sup>xxxvii</sup>. In order to rebuild the devastated legal system, deal with the 130,000 detainees suspected of genocide involvement<sup>xxxviii</sup> and build unity and reconciliation through justice, the Transitional Justice system developed in Rwanda has three key elements: the International Criminal Tribunal for Rwanda (ICTR), the National Court system, and the Gacaca Court system.

### *The ICTR*

The ICTR was established in November 1994 via UN Security Council Resolution 955 with the mandate of prosecuting those “*responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states, between 1 January 1994 and 31 December 1994*”<sup>xxxix</sup>. Additionally, the ICTR was tasked with aiding the spread of peace and reconciliation in Rwandan<sup>xxx</sup>. Specifically; the ICTR was to deal with Category One criminals<sup>xxxi</sup>. In November 1996 the Prosecutor General of the Supreme Court published an initial list of provisional Category One suspects numbering 1,946<sup>xxxii</sup>. The ICTR has been heavily criticised for various reasons<sup>xxxiii</sup> however those of particular reoccurrence are: its inefficiency – to date, the ICTR has sentenced 27, acquitted 5, has 2 cases on appeal, 28 in progress and 6 awaiting trial<sup>xxxiv</sup> at a cost of over \$1 Billion with its 2006-7 budget standing at just under a quarter of a billion dollars<sup>xxxv</sup>; the relative distance between the ICTR and the Rwandan population; and its failure to try any RPF members who may have committed war crimes which, under its mandate, it is able to do. Essentially, despite some notable successes, the ICTR has been seen as a failure to deliver justice to Rwanda by academics, government officials and the

Rwandan population itself; indeed, only 31.8% of Rwandans hold a positive attitude to the ICTR<sup>xxxvi</sup>. This is primarily due to its limited impact in achieving the eight goals of a Transitional Justice system.

### *Rwanda National Courts*

The Rwandan Transitional Justice system also includes National Courts however; due to the devastation befalling the Rwandan legal system throughout the genocide it is perhaps unrealistic to expect the National Courts to have been particularly effective in the thirteen years since its end. This is especially the case when we take into account the fact that it was the responsibility of the National Courts, with the appreciably diminished capacity that they now had, to try a 130,000 strong caseload. The National Court system thus faced enormous challenges and has, over the past thirteen years, made what can be defined as significant advancements given the baseline from which it began. In 1994 “*everything was needed at once, the justice system was in tatters, the number of prisoners was growing, the genocide survivors were crying for justice, and the former government had destroyed what it could not carry away*”<sup>xxxvii</sup>. In order to overcome the challenges facing it the National Courts, from 1995 engaged in an intensive recruitment and training exercise which, between 1995 and 1996 led to approximately 700 people being trained as prosecutors, judges, court clerks and secretaries<sup>xxxviii</sup>. Whilst the ad hoc training of such legal professionals has been criticised<sup>xxxix</sup> the National Courts, between 1997 and June 2002, were able to try 7,211 cases<sup>xl</sup>. The National Court system has been criticised on a number of grounds<sup>xli</sup> however, given its capacity at the end of the genocide, it has arguably contributed a great deal to the establishing of justice in post-genocide Rwanda despite its criticisms. However, whilst the National Courts have had relative successes it was acknowledged by the GoR that this effort alone was insufficient overcome the diminished ability of the National Courts to try the 130,000 caseload of genocide suspects and to address the demands of the Rwandan population for justice and encourage unity and reconciliation. This acknowledgement led to the piloting of the Gacaca Court system in 2002 and its expansion across all 9,001 cells, 1,545 sectors and 106 districts in January 2005<sup>xlii</sup>.

### *Gacaca Courts*

The Gacaca system was the result of a series of meetings known as the ‘Village Urugwiro’ consultations<sup>xliii</sup> in 1998-99 at the behest of the then-President Pasteur Bizimungu<sup>xliiv</sup> which brought together leaders from government, business, civil society and religious bodies to deliberate on the future of Rwanda’s political transition. One of the outcomes was the decision to develop the traditional Rwandan conflict management institution of Gacaca into a compromise between

Richard Bowd

traditional Gacaca and Western legal practices that best fits the needs of Rwanda<sup>xlv</sup>. Essentially, Gacaca is an informal legal system based on traditional conflict management approaches and operates at the grassroots level at the cell, sector and district level. At each level sit 19 Gacaca judges known as '*Inyangamugayo*'<sup>xlvi</sup> who pass judgements on those accused of genocide related crimes. Inyangamugayo's are civilians elected by the community and are then trained to a minimum legal level before sitting as a judge. The proceedings of Gacaca are then monitored by the Comite de Coordination, a governmental body which is charged with providing guidance to the Gacaca judges during the court proceedings. The mandate of Gacaca is to judge those accused of committing acts between 1<sup>st</sup> October 1990 and 31<sup>st</sup> December 1994 as sanctioned by Rwandan Organic Law 20/2000, Article 1. However, Gacaca only tries those accused of Category 2 to 4 crimes<sup>xlvii</sup>, leaving Category 1 crimes to the ICTR and the National Courts. The procedure for the Gacaca Court once identification of those suspects to face trial has been made is an open trial dependant on popular participation and witness testimony.

The Gacaca Court system has been claimed to seek restorative justice due to the fact it involves a collaborative process between genocide victims, perpetrators and the community at large. Gacaca encourages confession by offering reduced sentences and the ability to serve half the sentence as community service. This is particularly useful in the seeking of justice and reconciliation as it achieves many of the eight goals of restorative justice, potentially lessens the trauma experienced by the victims, speeds up judicial process and enables perpetrators to reintegrate into the community through community service. In terms of reconciliation the confession process serves to negate denial of the genocide and builds the foundations for victim and perpetrator to reconcile. Due to the localised nature of the Gacaca process the population are engaged in the process and therefore have ownership of it through such participation. This can be problematic when such participation is not forthcoming and this has been a major criticism of Gacaca. It should, however, be noted that a quorum of 100 for each cell needs to be reached before Gacaca can proceed. When participation is forthcoming the benefits of Gacaca can potentially be enormous. First, Gacaca can reveal the truth and enable an accurate historical account of the genocide. Second, the confession process can contribute to justice and reconciliation through disclosing the truth, providing information as to the whereabouts of bodies thus enabling a dignified reburial, and providing an arena for the seeking of forgiveness by perpetrators. Third, Gacaca makes significant contributions to eradicating the culture of impunity<sup>xlviii</sup> and ensuring the punishment of the guilty. Fourth, Gacaca dramatically speeds up the trials of genocide suspects, which fights impunity and restores the populations trust in the justice system and reduces the pressure on the National Courts and the Prison Service. Fifth, the decentralised nature of Gacaca ensures participatory justice rooted in Rwandan culture thus ensuring transparency and proximity to the population and, to a degree, a return to a period in which Hutu and Tutsi lived side-by-side in

Richard Bowd

relative harmony sharing the same land, language, religion and culture; a poignant reminder to the fact that co-existence is possible. Sixth, Gacaca adds a further dimension to the justice provided by the ICTR and the National Courts through its restorative nature. Rather than pursuing purely retributive justice, Gacaca seeks to punish those responsible for the genocide whilst restoring *“harmony and social order in society, and to re-include the persons who were the source of the disorder”*<sup>xlix</sup>.

Gacaca is however not without its critics<sup>l</sup>. The main criticisms of Gacaca are in regard to the *“competence of the trial judges, the impartiality and independence of gacaca courts, the susceptibility of the courts to government influence, and the lack of sufficient right to appeal in the original proposal”*<sup>li</sup>. In addition, Gacaca is heavily criticised due to the fact war crimes committed by the RPF are not tried by Gacaca thus delivering a ‘victor’s justice’ in which *“Hutu will remain killer and the Tutsi victim”* with *“no process at the official level which might allow for an explanation other than the Hutu perpetration of violence against Tutsi victim”*<sup>lii</sup>. Many of these criticisms are based in valid arguments and it would be folly to attempt to argue that the Gacaca system is perfect. However, whilst it is important to raise such concerns it is also of paramount importance to listen to the voices of the Rwandan population, something the International Community has been altogether reticent in doing. In the four years in which civil war and genocide was waged the International Community, lead by the West, essentially stood by and allowed the mass slaughter of approximately 800,000 people. In response to their guilt they have established the ICTR, which has effectively failed to deliver, and criticised the Gacaca system whilst offering no viable alternative. Indeed, one can see by the funding patterns of the United States Agency for International Development (USAID), in which under \$1 Million annually was pledged to the Gacaca system, whilst \$5 Million had been offered by the US as a reward for information leading to the arrest of a genocide suspect indicted by the ICTR<sup>liii</sup>, that commitment to the ICTR has been prioritised at the expense of rebuilding the national legal system; an endeavour that would not only significantly aid the pursuit of justice and reconciliation in Rwanda, but also furnish the country with a functioning legal system in the post PCE. Whilst the Gacaca system is not perfect it has a role to play; without it many prisoners would remain languishing in poor conditions often without charge, impunity could in no way be eradicated nor justice established due to the diminished capacity of the National Courts. Inaccurate and overly critical analyses of Gacaca<sup>liv</sup> are not helpful and while it can be argued that reform is required, it is necessary to listen to the voices of Rwandans. In an empirical study conducted by Longman et al in 2002 they found that 82.9% of Rwandans had confidence in the Gacaca process. What is even more interesting is the fact that 87% of Hutu’s had confidence in the Gacaca process compared to 74.6% of Tutsi’s. This would indicate that whilst 46.6% of Hutu’s believe crimes committed by the RPA/F should be included in Gacaca, the anticipated deepening of ethnic cleavages due to

Richard Bowd

Gacaca would not be forthcoming. Additionally, 84.2% of Rwandans believed Gacaca would make either Very Significant or Significant contributions to reconciliation as compared to 69.2% and 21.2% for National Courts and the ICTR respectively<sup>lv</sup> <sup>lvi</sup>. Gacaca clearly has the support of the Rwandan people and whilst it can be argued that the Gacaca system has flaws and is in need of reform, in the context of genocide ravaged Rwanda it is perhaps more important that Rwandans themselves decide their destiny. The International Community, while correctly raising concerns, should not only do more to support indigenous approaches to post-conflict reconstruction but should also recognise the fact that the way of the West is not the only, or necessarily the best, way. Transitional Justice takes place in significantly different context than established justice systems in the West and is confronted by altogether contrary challenges and therefore cannot be measured by the same criteria. Whilst human rights should not be ignored it cannot be expected that a Transitional Justice system operate in the same way as established justice systems as it has a different genesis, different objectives, different resources, and different intended outcomes. As Sooka accurately explains, *“at the outset, we need to accept that we are dealing with deeply flawed processes and trade-offs. Given the particular circumstances which exist at the time of the negotiated settlement, it may represent the best possible deal for civil society. The point is that any process should be adapted to the local conditions and context. One size cannot fit all”*<sup>lvii</sup>.

### Study Methodology Outline

The data for this paper was collected during two fieldwork research trips in Rwanda between October 2006 and August 2007. During this period life history interviews were taken with 50 ex-combatants<sup>lviii</sup> and 22 civilians, elite interviews with 26 policy personnel including government officials, members of the International Community and representatives of NGO’s, and Participatory Rural Appraisal (PRA) exercises in three villages<sup>lix</sup>. In terms of locations four villages, one in each province, and Kigali served as research sites with the following composition of respondents.

	<b>Ex-RDF</b>	<b>Ex-FAR</b>	<b>Ex-AG</b>	<b>Civilians</b>	<b>Total</b>
<b>Northern</b>	1	3	2	5	<b>11</b>
<b>Eastern</b>	11	1	2	5	<b>19</b>
<b>Southern</b>	8	2	1	3	<b>14</b>
<b>Western</b>	4	1	6	3	<b>14</b>
<b>Kigali</b>	8	0	0	6	<b>14</b>
<b>Total</b>	<b>32</b>	<b>7</b>	<b>11</b>	<b>22</b>	<b>72</b>

Table 1: Interview Composition, Rwanda 2006-7. Source: Richard Bowd

When considering official demobilisation and reintegration figures for Rwanda it is apparent that 66% were ex-RDF, 22% ex-FAR and 12% ex-AG<sup>lx</sup>. In terms of the composition of interviews conducted 64% were ex-RDF, 14% ex-FAR and 22% ex-AGs. Although the figures do not entirely match it is possible to claim a reasonably high level of representativeness.

The data collected during the two fieldwork phases was for a PhD thesis examining the reintegration of ex-combatants at its impact on reconciliation in Rwanda. Although the research was not focused on Gacaca and ex-combatant involvement this emerged as a reoccurring theme and will form part of the analysis within the thesis.

### Ex-Combatant Involvement in Gacaca

Ex-combatants are involved in the Gacaca Court in two primary ways: firstly, as participants, and secondly, as *Inyangamugayo*'s. Although it was not the purpose of this research to determine the participation levels of ex-combatants in Gacaca, of the 50 ex-combatants interviewed 20 (40%) of them made explicit reference to the importance of Gacaca in either assisting their reintegration or its contributions to reconciliation. As part of their demobilisation ex-combatants are required to undergo trainings at solidarity camps, or *Ingando*, during which time they are given lessons on many issues including, Unity and Reconciliation and Gacaca Courts. Specifically, ex-combatants were encouraged to participate in community activities that promote Unity and Reconciliation and Gacaca. A number of the ex-combatants, from all groups, indicated such teachings were important to their ability to reintegrate into the community and for community acceptance.

Of the 50 ex-combatants interviewed 9 (18%) of them had been elected to the Gacaca court in some capacity. The following table specifies the composition of ex-combatant involvement.

Respondent	Affiliation	Role in Gacaca	Ethnicity <sup>lxii</sup>
XCRDF1	RDF	Inyangamugayo (2000 <sup>lxii</sup> -Present)	Tutsi
XCRDF2	RDF	Inyangamugayo & 2 <sup>nd</sup> Vice President (Sector, 2005-Present)	Tutsi
XCRDF11	RDF	Inyangamugayo (Cell, 2006/7) & President (Sector, 2007-Present)	Tutsi
XCRDF14	RDF	Inyangamugayo (2006-Present)	Hutu
XCRDF17	RDF	Inyangamugayo (2006-Present)	Tutsi
XCRDF19	RDF	Inyangamugayo (Cell, 2005-Present))	Tutsi
XCRDF21	RDF	Inyangamugayo (2003-Present)	Tutsi
XCRDF31	RDF	Inyangamugayo & Vice President (2005-Present)	Tutsi
XCFAR7	FAR	Inyangamugayo & President (Cell, 2006-Present)	Hutu

Table 2. Ex-Combatant Involvement in Gacaca. Source: Richard Bowd.

Ex-combatant involvement in Gacaca is disproportionately high when considering their size within the population as a whole. Ex-combatants in Rwanda account for 57,931 out of a population of 9,907,509<sup>lxiii</sup> however these figures need to factor in the minimum age limit of 21<sup>lxiv</sup> to gain a truer understanding of ex-combatants involvement in Gacaca. When we subtract the 4,864 child soldiers demobilised<sup>lxv</sup> and adjust the population size to those of 18 and over we are left with 53,067 and 4,260,229<sup>lxvi</sup> respectively, thus ex-combatants constitute 1.25% of the entire population<sup>lxvii</sup>. Based on the findings of this research ex-combatant involvement in Gacaca is over 15 times greater than their proportion of the population; what this indicates will be discussed in the next section.

Table 2 also indicates that ex- RDF combatant's account for a disproportionately high number among ex-combatants with 8 of the 9 from this study coming from the RDF, only 1 coming from FAR and none coming from the AGs. There are a number of reasons as to why this may be the case: First, the relative low numbers of ex-FAR and ex-AG combatants in this study may not enable a comprehensive understanding of their involvement. However, when we consider that all 7 ex-FAR members and 5 of the 11 ex-AG members interviewed have held, or still do, at least one elected position of responsibility within their community it would indicate that there is not necessarily an evident bias in favour of ex-RDF members in the Gacaca system. This is particularly relevant when we take into account the fact that only 11 of the 32 ex-RDF members interviewed have held, or still do, at least one elected position of responsibility within their community, a disproportionately smaller amount when compared to those from FAR or AGs. Second, the average time between demobilisation and election to Gacaca from those interviewed is 5 years<sup>lxviii</sup> compared an average time between demobilisation and possible election to Gacaca<sup>lxix</sup> of 4 years 9 months<sup>lxx</sup>, 11 years<sup>lxxi</sup>, and 1 year 5 months<sup>lxxii</sup> for RDF, FAR and AGs respectively. This may indicate there exists a time element to achieve status as a person of integrity within the community and indeed one might expect it to take longer for ex-AGs to achieve this status than ex-RDF and ex-FAR because although they were not responsible for the genocide<sup>lxxiii</sup> they did engage in infiltrations into Rwanda and contributed to insecurity during the late 1990's. Although ex-FAR may have on average unofficially demobilised long before ex-RDF many did not return to Rwanda until '96, '97 and '98 having sought refuge in the Democratic Republic of Congo (DRC). That said, however, one would expect a greater level of ex-FAR involvement in Gacaca than indicated by this research. Nevertheless, even though the number ex-RDF seemingly dominates ex-combatant involvement in Gacaca it does not necessarily follow that there is bias in their favour or that Gacaca has been politicised, although that certainly may be the case. It would be very difficult to determine if this was the case and would certainly require advanced research into the election of Gacaca judges. It should, however, be noted that 90.8% of Rwandans either agreed or strongly agreed that they felt the election of

Gacaca judges was conducted fairly in their community with the distinction between Hutu and Tutsi being 93.3% and 85.3% respectively<sup>lxxiv</sup>.

Ex-combatants clearly play a disproportionate role in Gacaca courts however what is particularly interesting to look is firstly what this indicates as to their reintegration, and secondly, what benefits this may have on the reconciliation process in Rwanda. The following two sections of this paper shall analysis these two issues with respect to the data generated during the two fieldtrips in Rwanda.

## **Gacaca and Ex-Combatant Reintegration**

### *Ex-Combatant Reintegration*

Evident from this research is the fact that not only does ex-combatant involvement in Gacaca indicate success in their reintegration but it also aids the reintegration process. Utilising the data generated during fieldwork this section examines the nexus between ex-combatant reintegration and the Gacaca Courts. In order to do this it is first necessary to understand ex-combatant reintegration. Ozerdem defines reintegration as “*the process whereby former combatants and their families and other displaced persons are assimilated into the social and economic life of (civilian) communities*”<sup>lxxv</sup>. This process consists of: economic reintegration – the equipping of ex-combatants with the necessary skills, training and employment opportunities to enable their return to civilian life; political reintegration – “*the process through which the ex-combatant and his or her family become a full part of decision-making processes*”<sup>lxxvi</sup>; and social reintegration – the acceptance and gaining of trust of the community which facilitates a transformation of identity from combatant to civilian.

### *Gacaca and Social Reintegration*

Ex-combatant involvement in Gacaca has most relevance for social reintegration. When ex-combatants return to their communities they very often experience an initial period of fear and suspicion on the part of the community due to the conflict and the perception that ex-combatants may still be dangerous. Similarly, particularly for ex-AGs who have spent long

Richard Bowd  
periods outside of Rwanda, ex-combatants themselves may also experience an initial period of fear of the community. Results indicate that this period lasts for around six months and is dependant on the efforts made by the ex-combatant. Of the five District Reintegration Officer's (DRO)<sup>lxxvii</sup> interviewed four of them made explicit reference to the difficulties ex-combatants face when returning and how they are able to overcome this. As DRO1 states, *"The first thing is that whenever they come back they have a problem living with people. The populations don't feel like getting close to them, they have another view of them"*<sup>lxxviii</sup>. Throughout their training in Ingando ex-combatants are encouraged to participate in community activities in order to help their reintegration, *"we advise them to participate in the programmes of the government like Gacaca. We think this is something they can do"*<sup>lxxix</sup>. Ex-combatant attendance of Gacaca trials aids their reintegration into society by enabling the community to, over time, adjust to the presence of ex-combatants. It also provides an arena in which ex-combatants can make concerted efforts to be accepted through demonstrating they are trustworthy. This issue is particularly succinctly put in the following, *"when I first reached here there was a fear, people used to be scared of me. It was not easy for them to get close to me but I was showing them although I used to be a soldier I didn't have any intentions of behaving badly. Through Gacaca people got close together and talk again because before they had no ways of talking together. In a way people now have got close together and there is no more fear now"*<sup>lxxx</sup>. Gacaca, like many other community activities, enables ex-combatants to demonstrate their ability to live in the community and over time they come to be accepted by the community. Indeed, as this research suggests, a significant number of them are trusted to be more than mere spectators of Gacaca and are elected by the population to sit as Gacaca judges, or Inyangamugayo.

The very nature of the position of Inyangamugayo is based on trustworthiness, integrity and honesty and therefore, for an ex-combatant to be elected to such a position by his or her peers it is arguably strongest indication that they have successfully reintegrated. In order to achieve such a position ex-combatants must not only have been accepted by the community but must also have gained its trust. It cannot be stressed enough that the establishment of this trust comes from the actions of the ex-combatants themselves as many ex-combatants and civilian testify to. One particular ex-combatant emphasised this point stating, *"I tried to be honest in the population and they saw how I was behaving, I was responsible and my kids were studying so they trusted me. When Gacaca started I became the Vice President and I was judging well, people were trusting me"*<sup>lxxx</sup>. This view is also held by civilians who argue the role played by ex-combatants in the community engenders their acceptance, *"when they come in the population they live like other civilians, they do some patrols, they go in Gacaca, they*

Richard Bowd

*go in meetings, they go in Umuganda. You see that they are like other people...you see that trust is being rebuilt firstly because of Gacaca which works on the principle of unity and reconciliation*<sup>lxxxii</sup>.

Evidently ex-combatant involvement in Gacaca indicates a level of acceptance of and trust for those individuals involved and such involvement elevates such individuals to a position of role model thus encouraging other ex-combatants in their reintegration. By being elected as a Gacaca judge ex-combatants effectively deliver a message to other ex-combatants of the possibilities should they demonstrate a hardworking and honest character. By engaging in community activities and making efforts to fit back in to society ex-combatants are able to, in some degree, influence their future. The election of ex-combatants to the Gacaca Courts due to such character demonstrates the way in which ex-combatants may be able to reintegrate and this serves as an assistance and motivation to newly returned ex-combatants.

#### *Gacaca and Political Reintegration*

In terms of political reintegration the involvement of ex-combatants in Gacaca Courts also serves as an indicator to their reintegration. Violent conflict very often brings with it a violation of human rights and for societies emerging from conflict it is necessary to address this issue by safeguarding human rights and effectively confronting past violations. This can be achieved in part through the police force and the newly emerging democratic institutions but must involve the participation of civil society<sup>lxxxiii</sup>. Human rights violations have been extreme in Rwanda and Gacaca has been designed to confront these violations and engage the community in this process. By situating justice within the view of the community and focusing on its needs, the GoR is actively attempting to reconnect with civil society. It should be remembered that present day Gacaca was born out of discussions with leaders from government, business, civil society and religious bodies, whom together instituted a decentralised, democratic system that represents a political reconciliation between government and the population. Ex-combatant involvement in Gacaca further demonstrates government commitment to this political reconciliation due to the fact that not only are they permitted to sit on Gacaca but are also actively encouraged to engage in it. Whilst the results of this study show a disproportionate number of ex-RDF combatants being represented on Gacaca, in none of the 44 (50%) interviews that directly made reference to Gacaca did any make explicit or implicit suggestions that ex-RDF had been favoured by the government at the expense of ex-FAR or ex-AG<sup>lxxxiv</sup>. Furthermore, ex-FAR and AG election to positions of local level leadership ranging from being in charge of security at cell or sector level, to being Sector Councillor or *Abunzi*<sup>lxxxv</sup> signifies a lack of exclusion of any combatant group. A lack of government interference in the election of ex-combatants to Gacaca is particularly important in

Rwanda as government commitment to ex-combatant reintegration is likely to be followed by community commitment due to the obedient nature of ex-combatants, “*what is important especially in Rwanda is Rwandese are obedient people, very obedient, that’s why you can tell him to kill his wife, so they follow the leadership, now if you have a good leadership over time it [division and sectarianism] will phase out and become history*”<sup>lxxxvi</sup>. The political reintegration of ex-combatants therefore serves to facilitate and reinforce their reintegration more generally. Ex-combatant involvement in Gacaca can therefore have beneficial effects on their reintegration as a whole.

### *Gacaca and Economic Reintegration*

Ex-combatant involvement in Gacaca does not have a significant influence on economic reintegration nor does it provide any real indication of economic reintegration, as Gacaca does not have an economic dimension. However, what is important to note is that the effective social reintegration of ex-combatants can aid or reinforce economic reintegration through four main channels: First, previous networks, when re-established, may offer economic opportunities otherwise not forthcoming; Second, social acceptance may increase economic opportunities through demonstrated trust; Third, social reintegration provides a security net in times of economic difficulty through increased and strengthened networks; And Fourth, social reintegration does more to normalise ex-combatants as civilians thus making them more productive in a civilian environment. Therefore, although ex-combatant involvement in Gacaca has no direct impacts on economic reintegration the social reintegration benefits of such involvement can have derivative impacts on economic reintegration.

It is thus clear that ex-combatant involvement in Gacaca advances their social, political and economic reintegration, and serves as an indicator to such reintegration. It is therefore advisable that such involvement continues to be encouraged both at the individual ex-combatant and community level. Whilst it would be favourable that the numbers of ex-FAR and AG combatant involvement in Gacaca increases, for the GoR to actively pursue such an agenda there would be a danger of politicising the Gacaca system, a criticism already made by some. In time, as members from these groups, particularly ex-AG, become more ingratiated into the community and trust in them grows, one can expect their numbers in Gacaca to increase. Whilst it has been established that ex-combatant involvement in Gacaca is beneficial to their reintegration, what this paper now turns its attention to is the reconciliatory benefits of ex-combatant involvement.

## The Reconciliatory Benefits of Ex-Combatant Involvement in Gacaca

### *The Importance of Gacaca to Reconciliation*

As previously stated it is the intention of Gacaca to augment the reconciliation process in Rwanda and from the results generated in this research it would seem that Gacaca is having the desired affects. In two of the three villages in which PRA exercises were conducted Gacaca was expressed as a key mechanism for engendering trust, forgiveness, collective responsibility, social cohesion and unity and reconciliation. Two exercises utilised during the PRA were Institutional Diagramming<sup>lxxxvii</sup> and Social Capital Indicators<sup>lxxxviii</sup>. In one village Institutional Diagramming indicated that Gacaca was a central and crucially important institution in that community. The criteria for this, as defined by the community, was that it had a large range affecting many people, it was vital for survival, it had long-term sustainability, and it was high employer within the community. It was also indicated that Gacaca had strong linkages with local schools, through the education of unity and reconciliation, and the police force, through the establishing of security. Within this same village, in the Social Capital Indicator exercise, Gacaca was identified as a community event that: enables communication through the sharing of information regarding the past; encourages forgiveness; and promotes unity and reconciliation. Additionally, Gacaca helps the development of intercommunity trust and social cohesion through collective responsibility as it had an 80% attendance rate at that site. This was also apparent in the second village.

Interviews with ex-combatants, civilians and policy personnel alike stress the importance of Gacaca in the reconciliation process. Specifically, reconciliation is progressing because “*since Gacaca started, now we are going on another step of unity and reconciliation because these people are knowing who killed their family, they are knowing the truth and I think it is another step on unity and reconciliation*”<sup>lxxxix</sup> and this is particularly the case because “*it [Gacaca] breaks the walls that were built during the genocide, people get close to each other, they are no longer scared of each other*”<sup>xc</sup>. One member of the International Community drew attention to the role Gacaca plays in the reconstruction of Rwanda stating, “*I do think there is a Rwandan culture, its not like these are two groups who have never lived with each other competing over land now, they have lived with each other for hundreds of years so there’s a shared history, a shared language, a shared tradition there and that in a sense is what they go back to and try to work through and Gacaca is trying to pull an element of that, to try and deal with the trauma and come up with some kind of local justice. Some of the things they do around community development are similarly inspired by this tradition. I do think that there is a sense of society that exists between the groups, even if they don’t completely trust each other they will try and look forward and there are remarkable stories of people trying to move on and doing remarkable things*”<sup>xci</sup>. There are

Richard Bowd  
many more examples of these kinds of beliefs coming from ex-combatants, civilians and policy personnel and this indicates the importance that Gacaca has for reconciliation in Rwanda. Ex-combatants, purely by engaging with Gacaca like other civilians therefore bring benefits to reconciliation in Rwanda. They also make more specific contributions, an argument that rests in the notion that ex-combatant involvement in Gacaca is an indication of their successful social reintegration.

### *Skills*

Involvement in Gacaca indicates a successful transformation from combatant to civilian and throughout the process of this transformation ex-combatants develop skills that enable them to operate in civilian life; to eliminate the mental perception of affiliation to a specific combatant group both within their own psyche and that of the community. The skills and capabilities ex-combatants and community members acquire throughout the reintegration process (of which Gacaca is a part) – for example, negotiation skills, the development of tools to aid forgiveness and healing and skills of cooperation – are skills that will be necessary for successful reconciliation. In light of this it can be strongly argued that the social reintegration of ex-combatants constitutes an essential element of reconciliation, and because involvement in Gacaca provides a further arena in which such skills can be developed and disseminated within the community it follows ex-combatant involvement in Gacaca has reconciliatory benefits.

### *Engendering Trust*

If trust can be established and expanded in a PCE it builds strong foundations for a reconciliation process. Although this may occur at a micro scale, if social reintegration is effective countrywide this also implies that the development of trust, albeit within small communities, is also occurring countrywide. The key to a successful reconciliation process is linking these micro successes to generate trust throughout the country at a more macro level. Implicit within social reintegration are the ideas of communication, cooperation, coordination and commitment. If these are forthcoming the environment they produce is one in which the foundations of reconciliation can be established. Ex-combatant involvement in Gacaca clearly indicates a trust in them as individuals and this means three things: First, it is, dependant on the behaviour of an ex-combatant, possible to gain the community's trust; Second, election to the position of Inyangamugayo demonstrates a clear trust in that individual and a successful reintegration; and Third, the involvement of ex-combatants in Gacaca signals to newly returning ex-combatants that their reintegration is possible and provides them with 'roadmap' as to how they can achieve it. The trust that is demonstrated by electing an ex-combatant to a position of Inyangamugayo thus

indicates that a certain level of reconciliation between ex-combatants and their community has been achieved.

### *Synergy and Bridging Social Capital*

As previously noted, ex-combatant involvement in Gacaca demonstrates a commitment by the GoR to ex-combatant reintegration by virtue of the fact they are not blocked from taking up these positions and are encouraged to engage in Gacaca. This represents synergy or vertical social capital<sup>xcii</sup> and renews community trust in the government that had been decimated through the conflict and genocide, an important aspect of political reconciliation. Similarly, the involvement of ex-combatants in Gacaca facilitates the restoration of bridging social capital<sup>xciii</sup> between ex-combatants and the community, ex-combatants from different groups, and Hutu and Tutsi. During violent conflict an ‘us’ and ‘them’ mentality is often developed, in Rwanda this was primarily the case between Hutu and Tutsi but also between combatant and civilian and combatants of different groups. In order to overcome this mentality in the PCE it is necessary to build bridges between such groups and enable them to cooperate together, bridging social capital. As bridging social capital is restored and strengthened antagonisms between previously conflicting groups are reduced thus building the foundations for reconciliation to take root and develop. When ex-combatants, regardless of military affiliation or ethnicity, are elected to positions of Inyangamugayo<sup>xciv</sup>, it presents an avenue through which ex-combatants and civilians, ex-combatants from different groups, and Hutu and Tutsi, can reconcile through the restoration of bridges between these groups.

### **Conclusion**

Gacaca has been demonstrated to be an important institution not only in the Transitional Justice system in Rwanda but also for the reconciliation of Rwandese. In terms of ex-combatant involvement in Gacaca this both facilitates and demonstrates their successful reintegration into the community and ensures those who are elected act as role models for newly returning ex-combatants and, indeed, the community at large. Successful ex-combatant reintegration contributes to the building blocks of reconciliation and as such their involvement in Gacaca goes some way in promoting the reconciliation process. The trust in ex-combatants that demonstrated by their election to Inyangamugayo’s delivers a clear message that although there may be much to do in terms of reconciliation in Rwanda, there is progress being made.

Ex-combatant involvement in Gacaca clearly has reconciliatory benefits however it is important to draw attention to two issues. First, it is again necessary to note the disproportionate number of

Richard Bowd

ex-RDF in Gacaca, which may give rise to claims of politicisation of Gacaca and bias in favour of ex-RDF. However, should the government rectify this by imposing ex-FAR and AG members as Inyangamugayo it not only overtly politicises the process but also destroys the notion trust and integrity being the fundamental principles of election to the post and ignores the wishes of the community; actions that will surely damage vertical social capital and bridges between groups. Until demonstrated otherwise it is necessary to assume Gacaca elections are free and fair however, it would be beneficial to conduct further research on this issue. Second, there is a legitimate concern that ex-combatants may dominate Gacaca due to their overrepresentation as judges. This is linked to the previous point regarding ex-RDF involvement, however the same points apply. This indicates a clear need to research this issue further in order to ascertain the election procedures in Gacaca and determine whether or not they are representative of the community.

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- <sup>i</sup> Marks, 2001.
- <sup>ii</sup> Uvin, 1996.
- <sup>iii</sup> Prunier, 1995.
- <sup>iv</sup> [www.inkiko-gacaca.gov.rw/En/Generaties.htm](http://www.inkiko-gacaca.gov.rw/En/Generaties.htm)
- <sup>v</sup> United Nations Security Council, 'Resolution 955', S/RES/955 (1994): 2
- <sup>vi</sup> Corey & Joireman, 2004
- <sup>vii</sup> Keen, 1998; Kaldor, 1999; Gleditsch et al, 2002; and Sisk, 2004
- <sup>viii</sup> Cairns, 1997
- <sup>ix</sup> Colletta & Cullen, 2000: 1
- <sup>x</sup> Baker, 1996: 564
- <sup>xi</sup> Shiver Jr, 1999: 212
- <sup>xii</sup> Smith, 2005: 35
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- <sup>xiv</sup> Humphrey, 2002: 107/8 paraphrasing Jacobs (1997) and Minow (1990)
- <sup>xv</sup> Rigby, 2001 & Ramsbotham et al, 2005
- <sup>xvi</sup> Hayes, 1998: 43
- <sup>xvii</sup> Hamber, 2001
- <sup>xviii</sup> Anderlini et al, 2004
- <sup>xix</sup> It is not within the scope or requirement of this paper to examine such available mechanisms. However, for further reading see Anderlini et al (2004), Bloomfield et al (2003) and Olson (2002)
- <sup>xx</sup> Menkel-Meadow, 2007: 10.2
- <sup>xxi</sup> For a detailed reading on this see Brown, 2001.
- <sup>xxii</sup> For an interesting discussion on the stages of conflict see Brahm and Kriesberg (2003) essays on [www.beyondintractability.org](http://www.beyondintractability.org) and Alker et al (Eds) (2001).
- <sup>xxiii</sup> Anderlini et al, 2004: 1
- <sup>xxiv</sup> Rwanda Government – [www.gov.rw](http://www.gov.rw)
- <sup>xxv</sup> Corey & Joireman, 2004.
- <sup>xxvi</sup> Prunier, 1995.
- <sup>xxvii</sup> [www.inkiko-gacaca.gov.rw/En/Generaties.htm](http://www.inkiko-gacaca.gov.rw/En/Generaties.htm)
- <sup>xxviii</sup> Marks, 2001
- <sup>xxix</sup> United Nations Security Council, 'Resolution 955', S/RES/955 (1994): 2
- <sup>xxx</sup> Within the preamble to the resolution on page 1 the resolution states, "convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace"
- <sup>xxxi</sup> Organic Law No. 08/96, Article 2. Category One criminals comprised the organizers and planners of the genocide and crimes against humanity, persons who abused positions of authority within the administration, the army, political parties, religious groupings or militias to commit or encourage crimes, notorious killers who distinguished themselves by their ferocity or excessive cruelty and, lastly, perpetrators of sexual torture
- <sup>xxxii</sup> Dubois, 1997.
- <sup>xxxiii</sup> For a detailed analysis of the ICTR see Cobban (2003), Des Forges & Longman (2004) and Vokes (2002).
- <sup>xxxiv</sup> ICTR - <http://69.94.11.53/default.htm>
- <sup>xxxv</sup> Boyle, 2006.
- <sup>xxxvi</sup> Longman et al, 2004.
- <sup>xxxvii</sup> Human Rights First, 1997
- <sup>xxxviii</sup> Ibid
- <sup>xxxix</sup> Ibid
- <sup>xl</sup> Des Forges & Longman, 2004.
- <sup>xli</sup> See Des Forges & Longman, 2004 for an analysis of the judicial process in Rwanda
- <sup>xlii</sup> Longman, 2006.
- <sup>xliii</sup> Named after the presidential residence that served as a location for the discussions.
- <sup>xliv</sup> President Bizimungu was the first president in the Government of National Unity.
- <sup>xlv</sup> It is not within the scope or requirements of this paper to provide a detailed analysis of the emergence and workings of Gacaca or its criticisms. For an excellent article on the Gacaca system see Longman, 2001. See also Fullerton (2003), Corey & Joireman (2004) and Karakezi et al (2004).
- <sup>xlvi</sup> Inyangamugayo is a Kinyarwanda word meaning one who is trustworthy or persons of integrity.
- <sup>xlvii</sup> Category 1 crimes – planners and organiser of the genocide, killings of particular fervour and sexual crimes – are tried by the ICTR and National Courts; Category 2 crimes – Killing or intending to kill under direction of others – are tried by the District-level Gacaca; Category 3 crimes – those involving bodily injury – are tried by the Sector-level Gacaca; and Category 4 crimes – property crimes – are tried by the Cell-level Gacaca.
- <sup>xlviii</sup> There are legitimate claims to the contrary that shall be discussed.
- <sup>xlix</sup> Fullerton, 2003: 4.

<sup>i</sup> For a full and in-depth analysis of these criticisms again refer to Longman, 2006.

<sup>ii</sup> Longman, 2006: 213.

<sup>iii</sup> Balint, 2001: 36.

<sup>iiii</sup> Des Forges & Longman, 2004: 59

<sup>liv</sup> For example, Corey & Joireman (2004) who incorrectly make reference to the issue of trauma rape victims face when testifying at Gacaca. Those suspected of rape are classified as Category One and subsequently tried either in the National Courts or the ICTR and not Gacaca. Related to this point is the fact that rape victims would be required to testify in National Courts, as they are in legal systems throughout the world, or the ICTR and as such would still face the trauma of their rape. Additionally, by trying rape cases in the National Courts and the ICTR they are distanced from the population thus reducing the possibility to remove the stigma attached to rape, conversely Gacaca may actually go some way in reducing or eradicating such stigma. The article written by Corey & Joireman was published in African Affairs in January 2004, one year before Gacaca became a countrywide institution. Being so critical before a policy has even been implemented is not helpful particularly when no alternative is offered other than the inclusion of RPF war crimes in Gacaca. Whilst the inclusion of such crimes would be advisable, and I am in no way defending the exclusion of such crimes, it must be noted war crimes committed by the RPF after brought before the National Courts.

<sup>lv</sup> Longman et al, 2004.

<sup>lvi</sup> It should be noted that this research was conducted in 2002 in the period between the piloting of Gacaca and its nationwide expansion.

<sup>lvii</sup> Sooka, 2006.

<sup>lviii</sup> This included 32 ex-Rwanda Defence Force (RDF), 7 ex- Forces Armees Rwandaises (FAR), and 11 ex-armed groups (AG's).

<sup>lix</sup> PRA exercises were conducted in villages in the Northern, Eastern and Southern Provinces. Despite attempts to do the same in the Western Province no one volunteered.

<sup>lx</sup> Based on figures given to me by the Rwanda Demobilisation and Reintegration Commission (RDRC) Coordinator in October 2006 of 38,731 ex-RDF, 13,000 ex-FAR and 6,200 ex-AG's with a total of 57,931.

<sup>lxi</sup> Based in explicitly being told by the respondent their ethnic group or implicitly based on the information given throughout the interview regarding family and social life prior to and during the conflict.

<sup>lxii</sup> Although Gacaca was not countrywide at this point it was in the planning stage and the position of Inyangamugayo existed becoming a Gacaca judge in the elections in 2005.

<sup>lxiii</sup> According to the CIA World Factbook as of 13<sup>th</sup> December 2007 -

<https://www.cia.gov/library/publications/the-world-factbook/geos/rw.html>

<sup>lxiv</sup> 21 is the minimum age before one can be elected to the position of Inyangamugayo

<sup>lxv</sup> Based on figures given to me by the RDRC Child Protection and Liaison Officer in October 2006.

<sup>lxvi</sup> Based on the assertion by Rutagengwa (2006) that 43% of the population are aged 18 and over.

<sup>lxvii</sup> It must be noted that these figures are not fully accurate on account of the fact that the minimum age to be an Inyangamugayo is 21 but the age that define a child soldier is below 18. Therefore I have calculated the proportions using the age of 18 which will actually serve to reduce the proportion of ex-combatants involved in Gacaca thus emphasising my point further, that taking number of ex-combatants who are involved in Gacaca and comparing it to the number of people who potentially could be involved as defined by age ex-combatants are over represented.

<sup>lxviii</sup> The demobilisation date for XCRDF31 was not obtained and therefore this respondent was not included in the calculation.

<sup>lxix</sup> Taking 2005 as the year Gacaca was implemented nationwide.

<sup>lxx</sup> Discounting XCRDF23 who demobilised in 2006 and XCRDF31 whose demobilisation date was not obtained.

<sup>lxxi</sup> Based on an unofficial demobilisation year of 1994 as those who demobilised as ex-FAR did so in 1994 and did not continue fighting, however this date is not their official demobilisation date as the First Phase of the Rwanda Demobilisation and Reintegration Programme (RDRP) did not begin until 1997.

<sup>lxxii</sup> Discounting XCAG9 who demobilised in 2006.

<sup>lxxiii</sup> Ex-AGs are screened when they return from the DRC and if they had been involved in the genocide would be identified at this point.

<sup>lxxiv</sup> Longman et al, 2004.

<sup>lxxv</sup> Ozerdem, 2002: 962.

<sup>lxxvi</sup> Kingma, 2000: 28.

<sup>lxxvii</sup> Each district in Rwanda has a DRO, an employee of the RDRC who is responsible for assisting in the reintegration of ex-combatants in that district.

<sup>lxxviii</sup> Interview with DRO1, June 2007.

<sup>lxxix</sup> Interview with DRO3, May 2007

<sup>lxxx</sup> Interview with XCRDF17, June 2007

<sup>lxxxi</sup> Interview with XCRDF31, November 2006.

<sup>lxxxii</sup> Interview with CIV7, June 2007.

<sup>lxxxiii</sup> Last et al, 1997 & Kingma, 2002.

<sup>lxxxiv</sup> A notion supported by Longman et al, 2004.

<sup>lxxxv</sup> Abunzi are mediation committee members who are responsible for mediating conflicts between parties within their jurisdiction.

<sup>lxxxvi</sup> Interview with RDRC Coordinator, November 2006.

<sup>lxxxvii</sup> Institutional Diagramming is used to generate an understanding of local institutions and the importance attached to them by the community.

<sup>lxxxviii</sup> Social Capital Indicators is an exercise that allows community members to identify and explain indicators of social capital in their community.

<sup>lxxxix</sup> Interview with XCRDF11, June 2007.

<sup>xc</sup> Interview with CIV4, June 2007.

<sup>xc i</sup> Interview with World Bank official, July 2007

<sup>xc ii</sup> Vertical social capital refers the way in which leaders and government institutions engage and interact with civil society.

<sup>xc iii</sup> Bridging social capital refers to the bridge between networks, associations and communities.

<sup>xc iv</sup> As previously noted, ex-RDF in this study do constitute a disproportionate number of those in Gacaca, as do Tutsi who number 7 of the 9 Inyangamugayo's. The presence of ex-FAR and Hutu members indicates it is not necessarily the case that ex-FAR and AG members or Hutu's are discriminated against. This is supported by the fact that 90.8% of Rwandans are happy with the election of Gacaca judges in their areas and by the following, *“when they are back to their community they may be elected or they may be in the Gacaca and you will not see people who are elected because they are an ex-combatant of this type, you will not find this and this is an indication of reconciliation when you see them participating in these activities together without exclusion”*, Interview with DRO4, June 2007.