Justice & Reconciliation

Rebuilding the Rwandan justice system after the 1994 genocide

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Contents

Introduction

For this Bachelor-thesis I will make a literature study on the reconstruction of the Rwandan justice system in the aftermath of the 1994 genocide. This is because I am very interested in legal pluralism and reconstruction. I chose the case of Rwanda, because there they developed a very unique multi-level approach of dealing with their past. The case of Rwanda is special because after the genocide not much was left from their justice system. They had to rebuild it completely and used not only national justice, but also international and local justice to prosecute the enormous amount of perpetrators and to rebuild the justice system. Because they had to start all over and use the different levels, this case can teach us a lot about justice and reconciliation in a post-genocide situation, especially about the interaction between the different levels and the handling of lots of accused.

In this thesis I would like to find an answer to the following question: What is the relation between justice and reconciliation in the post-genocide justice systems of Rwanda?
In the first chapter I will form a theoretic framework around the central concepts justice and reconciliation. First, I will explore these concepts separately, but also the relation between the two, not only generally, but also more specific for post-conflict societies. To illustrate this I will use several cases of post-conflict societies and the different combinations of justice and reconciliation used there.
In the second chapter the history of Rwanda will be the central theme. I will look at what caused the genocide of 1994 and what the need for justice and reconciliation was afterwards.
In the third and fourth chapter the multi-level approach of the reconstruction of the justice system of Rwanda will be discussed. The national justice system and the International Criminal Tribunal for Rwanda (ICTR) will be discussed in the third chapter and the Gacaca, local courts, in the fourth. In the final chapter I will conclude and discuss the previous and hope to give a clear answer to my leading question.

1. Theoretical framework

In a post-conflict situation both justice and reconciliation are fundamental for adequate peace building, but the problem with this statement is the tension between these two concepts. Both justice and reconciliation have many different definitions and the relation between the two is also ground for debate. For instance Mahmood Mamdani (1996 cited in Graybill, 2004, p. 1121) states: "If South Africa exemplifies the pursuit of reconciliation without justice, Rwanda exemplifies the opposite: the pursuit of justice without reconciliation." So according to Mamdani in practice it is possible to pursuit justice and reconciliation separately in a post-conflict situation. Whether his opinion about the situation in Rwanda is true is not the question in this chapter, but more on this and how justice and reconciliation are related in Rwanda can be found in chapter three and four.
The question remains: is reconciliation possible without justice and justice without reconciliation in a post-conflict situation? Others, like Dr. J.P. Lederach (1997 cited in Molenaar, 2005), a Professor of International Peace building, say that justice is a vital part of reconciliation. In this chapter both the concepts and their relation will be studied.

1.1 Justice

Justice, as well as fairness, is a very vague term, which is difficult to define. Thereby there is no consensus on the existing definitions. Despite of this lack of consensus I will use the following part to explore the different views upon justice and justice systems.

'What is justice' is a question asked by a lot of different people over time. A long time people thought that justice was a divine command or natural law (Austin, 2006). This implies that justice and morality are the same. But justice is not the same as morality (Slote, 2002). This was only the case in small-scale, traditional communities. Norms where based on religion and tradition and they were regulated by social control. When these communities grew into larger groups and eventually nations, social control was not enough anymore to control the norms. Therefore the norms had to be formalized into laws. These laws are not made to fix morality, but to ensure an orderly society. This brings us at the core value of justice: equality. According to Aristotle the key element of justice is treating cases alike (Justice, 2009). This idea was broadened during the Enlightenment. The followers of the Enlightenment did not want to entirely control the people, but give them freedom. The core of their ideas was that this freedom must not be in conflict with someone else's freedom (Gosepath, 2007).

Gerhart Husserl, a early twentieth century legal philosopher, is one of the writers who made the concept of justice more concrete and workable. He said that the idea of justice is in the demand that a person shall act under given circumstance in a given way, thus that he shall act justly. But to make justice real and effective in the social world the community of law is built. Legality is not the same as justice, but makes it workable. Law focused mainly on injustice and with the defeat of this injustice, justice will be introduced into society (Husserl, 1937).

Retributive and restorative justice

There are many different forms of justice. In the scope of this thesis two types are important to make the term justice more concrete. Therefore I would like to emphasize on retributive and restorative justice. First I will introduce these types separately and after each type I will also briefly mention the implications of the use of this type in a post-conflict society.

I will start with the most well-know form of justice, which is retributive justice. The key values of this form are guilt and punishment. These values derive from the utilitarian notion that people fear punishment, therefore they will rationally choose to act according to the law. Thus, this form of justice requires some kind of rational decision-making, but what can we expect if individuals are in a conflict situation, were they are surrounded by chaos, social pressure and a government that is urging on to mass violence? Is it possible for an individual to make his own decisions in these situations of mass violence, especially if violence is not seen or portrayed as illegal or morally wrong? This shows that in situations of mass violence, or even genocide, retributive justice has limitations (Drumbl, 2000), because it requires rationality and individual decision making. Especially in the situations where this is lacking we should maybe not only demand for punishment, but primarily seek satisfaction and peace for the victims, especially if large numbers of the population are affected by the violence, as perpetrator or victim.

Restorative justice focuses on this last objective. According to criminologists Hudson and Galaway restorative justice have three fundamental elements: *"First, crime is viewed primarily as a conflict between individuals that results in injuries to victims, communities, and the offenders themselves, and only secondarily as a violation against the state [or the international community]. Second, the aim of the criminal justice process should be to create peace in communities by reconciling the parties and repairing the injuries caused by the dispute. Third, the criminal justice process should facilitate active participation by victims, offenders, and their communities in order to find solutions to the conflict.*" (Drumbl, 2000).

Also around restorative justice there is a lot of debating and discussions about what it exactly is. In her article "Restorative justice: the real story', Kathleen Daly sums up four of the main myths of restorative justice. The first states that restorative justice is the opposite of retributive justice, the second says restorative justice uses indigenous justice practices and was the dominant form of pre-modern justice, the third is that restorative justice is a 'care' (or feminine) response to crime in comparison to a 'justice' (or masculine) response, and the fourth is that restorative justice can be expected to produce major changes in people. Daly calls these myths, because they present just part of the truth, to make it more sharp and clear. In most situations the difference between restorative and retributive justice is not as sharp as stated, but they overlap and have a different emphasis.
Restorative justice is not the golden solution to all the flaws of retributive justice, it just has another emphasis. In retributive justice the accent is on the resettlement of one's account, involving punishment, while restorative justice stresses on the healing of relationships between conflicting parties.

Even though Daly's article is about youth justice conferencing in New Zealand and Australia I think having these myths in mind can help us to get a clearer view of reconstructive justice, also in post-conflict situations.

1.2 Reconciliation

Also within the concept of reconciliation the healing of relationships has an important role. Reconciliation comes from the Latin word *conciliatus*, which means 'coming together'. Many authors mention that reconciliation has its origin in the Christian tradition, but the main common characteristics are already present in traditional African justice systems. Even though, the concept is a relatively new one in the field of conflict resolution and therefore there is no standard definition which is primarily used.

Johan Galtung (cited in Molenaar, 2005) has one of the shorter and less extensive definitions. He simply says: 'reconciliation= closure + healing'. Louis Kriesberg (cited in Molenaar, 2005, p.32) gives a more detailed definition: "*Reconciliation refers to the process by which parties that have experienced an oppressive relationship or a destructive conflict with each other move to attain or to restore a relationship that they believe to be minimally acceptable."* This definition contains five important elements, which makes it very valuable. Firstly, Kriesberg sees reconciliation as a 'process', not something that happens overnight. Secondly, Kriesberg points out the starting point, the experienced negative situation. Thirdly he acknowledges that in many situations there is no clear distinction between the victim and the perpetrator. They had a

conflict 'with each other'. In the fourth place also a goal is stated: they move to attain or restore a relationship. The last element makes this definition very unique and adds realism to it. Kriesberg does not expect the parties to become best friends, but the move to a relationship 'they believe to be minimally acceptable', which should be enough for peaceful coexistence.

This is a good and profound definition, but it does not tell how the relationship should be restored, what the process entails. Someone who wrote more on the practice of this process is John Paul Lederach. His four components are included in most works on reconciliation. These components are truth, justice, mercy and peace. Lederach took these four directly from the Bible, psalm 85 which goes as follows: "Truth and mercy have met, peace and justice have kissed" (cited in Molenaar, 2005). Lederach emphasizes the fact that these elements should always be interlinked. One thing can not be seen without the other. For example, mercy is meaningless without a form of justice.

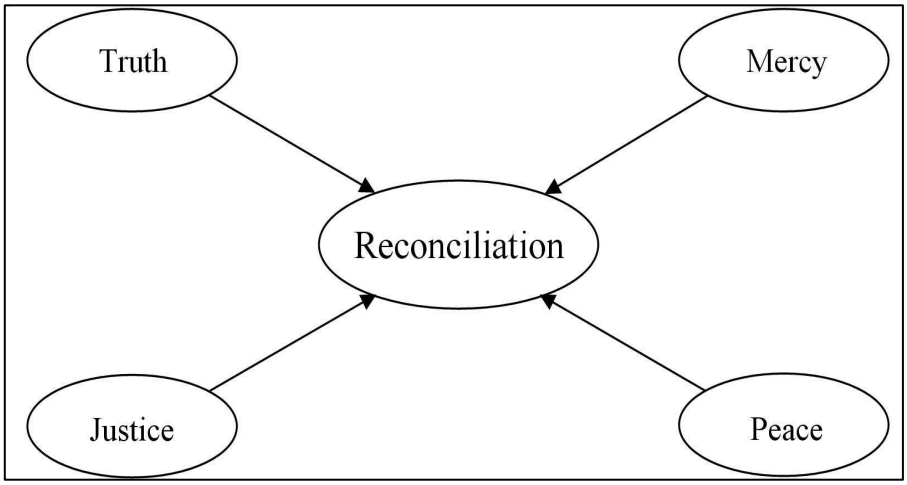

Figure 1 Source: Lederach, 1997 cited in Molenaar, 2005

This conceptualization of reconciliation has been the starting point for many other theories. Most studies used the four elements, although sometimes in a slightly other form. For example, Kriesberg changed the term mercy for 'remorse and forgiveness', because reconciliation needs interaction and not only action from one side. Both parties need to make an effort. He also changed peace into 'safety', because that also embodies human rights, basic needs and democracy. Also the International Institute for Democracy and Electoral Assistance (IDEA) based their theories around reconciliation on the work of Lederach, but they had four somewhat different elements, namely 'truth-telling', 'healing', 'restorative justice' and

'reparation'. In these examples you can see that many authors use the theory of Lederach and apply it to their own research. Herein you can see some consensus on the different aspects of reconciliation, but they still differ in the details.

Especially the element mercy and forgiveness raises a lot of questions in attempts to define reconciliation. Forgiving can not be done on state-level, or by a commission. It is a personal process, victims or survivors should not be forced to forgive. Therefore it is questionable if forgiving should be a goal in reconciliation. According to Karen Brounéus, in a study for the SIDA (Swedish International Development Cooperation Agency) reconciliation does not require forgiving, forgetting or loving each other. Instead she defines reconciliation as follows: *'Reconciliation is a societal process that involves mutual acknowledgment of past suffering and the changing of destructive attitudes and behaviour into constructive relationships toward sustainable peace. In other words, reconciliation mainly focuses on remembering, changing, and continuing with life in peace.*" (Brounéus, 2003).

1.3 Relation between justice and reconciliation

The relationship between justice and reconciliation is a very difficult one. Some consider justice a vital part of reconciliation, but in those cases they are mostly talking about restorative justice. This leads to the question if reconciliation is possible without retribution and punishment? And is it possible to attain sustainable peace after collective amnesty? Those questions are too broad to answer in this thesis, but I would like to make a start with it. In the following section I would like to look into the relation between justice and reconciliation in general for peace building in post-conflict situations and in chapter 3 and 4 this will be more specified to the case of Rwanda.

One of the main causes for massive violent conflict is a history of violence followed by impunity (Panckhurst, 1999). Impunity is in short 'the exemption from accountability, penalty, punishment, or legal sanction for perpetrators of illegal acts (Afflito, 2000; McSherry & Molina, 1992; Penrose, 1999 cited in Opotow, 2001). A more extensive explanation on impunity can be found in the next chapter. To end this impunity, mercy and forgiving can be the wrong way, punishment and retribution seems needed to individualize guilt and to show that not the entire population, but only the guilty few are to blame. In my eyes, therefore this form of justice is vital to reconciliation. But to secure long term stability, especially after civil war or genocide you also need a form of reconciliation, because both perpetrators and victims again should live together in the same country. Therefore they have to deal with their past in some way. Thus peace building is about a balance between

justice and reconciliation, one can not go without the other. But it is not easy to determine this balance, because every post-conflict situation is different. And they also need a distinct approach. For instance, justice can be imposed from the top, with international help, while reconciliation is something which can not occur without the help of the people and is mostly a domestic affair (Panckhurst, 1999). So justice and reconciliation can be pursued separately, but not without the other, if you wish to build a long term peace and stability. With this statement I mostly follow the theory of Lederach on this topic. Although I do think that justice and reconciliation are equally important, justice is not just some part of reconciliation.

1.4 Possible post-genocide approaches

In the relationship between justice and reconciliation the keyword is balance. To show this balance is not always the same I will discuss several cases before the Rwandan case will be explored. With this I would like to make clear that in each post-conflict situation a different approach is chosen, due to political decisions, possibilities and needs.

In short there are three main possibilities in post-conflict peace building. The first is a main focus on justice. This can be found in the earliest international courts, like in Nuremberg and Tokyo. These were the first international crime courts, founded in 1945 and 1946, in the aftermath of the Second World War (Nuremberg Human Rights Centre, 2006). These courts were mainly military courts with an emphasis on justice. This is a good post-conflict approach, but this situation was a war between countries, and not within countries. Therefore reconciliation was not their first need. Contemporary conflicts are mostly within countries, and therefore need an other approach to secure a long term stability. One of those approaches is amnesty, or ignoring past abuses, like they did in Mozambique after the civil war in 1992. Each side granted the other amnesty to speed up the reconciliation process (Snyder and Vinjamuri, 2004). In short term this could really help, but, as you can read also in chapter 2.1.4, this could feed a culture of impunity. This could eventually lead to new atrocities. Amnesty is in other cases also combined with Truth Commissions. Because of the claim that South Africa made during the 1994 Kigali Conference, that Truth Commissions and amnesty are the true African solution to conflict and genocide (more on this can be found in the following chapters), I will examine this form some more.

Reconciliation in South Africa

In the post-cold-war period many reconciliation commissions came up. Sierra Leone, the Central African Republic, Ghana, Morocco and Nigeria all had some sort of this commission (Graybill and Lanegran, 2004), but the most well known reconciliation commission, on which most others are based, is the Truth and Reconciliation Commission (TRC) of South Africa which was set up in 1995, to investigate the crimes committed during the Apartheid era, which lasted from 1960 until 1994 (BBC, 1998). The TRC mainly emphasizes reconciliation between perpetrators and victims based on repentance and forgiveness. Through this more individual reconciliation they hope to get the entire country reconciled.

The TRC works with two committees. The first is the Human Rights Violations Committee. Here a select group of victims could testify publicly how they had suffered. For many it had a significant (psychological) value to tell their story for an audience. The second committee was the Amnesty Committee. This committee heard those who committed crimes and wanted to admit this. About 7000 persons applied to come for this commission and gain amnesty. Most of these applicants were common criminals who wanted to convince the Committee that they had political motives. Only a few of these 7000 where top leaders during the Apartheid (Graybill and Lanegran, 2004). To get amnesty of this commission you only had to admit what you did during the Apartheid. Although intentionally the reconciliation had to be based on repentance, in practice remorse was not necessary, and indeed many who came for the commission did not apologize for their deeds. In the end about 16% of the applicant really did get amnesty, so out of a population of 43 million people, only around 1000 took their responsibility for their crimes during the Apartheid and received amnesty after which they could integrate back into society (Graybill and Lanegran, 2004). The problem with the TRC is the dichotomy between “Interpersonal or individual reconciliation” and “national unity and reconciliation”. The TRC aims at the latter through the first. But that made the successfulness of it all questionable, because it was difficult to evaluate due to these unclear objectives. To make Truth commissions more effective in the future the argument that truths leads to reconciliations should be more tested and the commission itself should have a clear view of what kind of reconciliations they are aiming for and what this reconciliation actually is (Graybill and Lanegran, 2004).

1.5 Conclusion

Both justice and reconciliation are somewhat vague terms, but considered by many as vital parts of peace building, especially in post-conflict countries with a culture of impunity. Justice is necessary to individualize guilt, to show not an entire

population is to blame, but only the perpetrators. This is also an important step in reconciliation. But by only sentencing people a long term stability can not be gained, because they do not have to acknowledge that they did something wrong and this can lead to new problems when they come out of prison. Only sentencing can also leave the victims with a feeling of dissatisfaction, because they are not really involved in the process. Therefore you need reconciliation. This can not be imposed from the top, but has to come from both the victims and the perpetrators. How this reconciliation is formed depends on the past of a country and on the willingness of the people. It is impossible to force people to reconcile. Thereby reconciliation is a hard to measure and long term process which can take many years.

2. The need for reconciliation and justice in Rwanda

In the case of reconciliation and justice Rwanda is a very interesting country. Rwanda had a horrible past, but they are now undertaking all kinds of things to deal with their history. Before this approaches will be examined we first have to look at Rwanda's past for a better understanding of the current situation and the choices that were made in rebuilding the justice system. Therefore this chapter will start with an overview of the modern history of Rwanda, its colonial past, what happened in the post-colonial time and the 1994 genocide. The main question of this chapter will not only be: 'what caused the 1994 genocide in Rwanda?' But we also look at what happened during the genocide and what Rwanda most needed after it ended. In order to find an answer to these questions we first look at how the two main groups in the genocide are related to each other and how this could lead to something horrible in 1994. Then I will describe the Rwandan past, for the colonial time until the genocide. After that I will focus more on what is called the 'culture of impunity', because this is also often named as a cause of the genocide. After this the genocide and its aftermath will be discussed.

2.1 History of the Rwandan genocide

Three months of cruelty seem defining for Rwanda as we know it at present. A genocide, presented by the media as a result of spontaneous chaos (Hilsum, 1994 cited in Melvern, 2008) or tribal slaughter (The Independent, 1994), but the cause of this genocide is rooted much deeper. It was well planned and had a long history.

The relation between Hutu and Tutsi

The main cause of the genocide is the often made distinction between the Hutu and the Tutsi. These are two of the three groups in Rwanda, the other is the Twa, a pygmoid group which was less than 1% of the population. The Hutu were the largest group.

After the genocide it became very delicate to talk about this subject. If you argue that there is no difference (or a class difference) between Hutu and Tutsi you are immediately seen as pro-Tutsi, while the 'distinct difference' view indicates pro-Hutu orientation (Mamdani, 2002). Nonetheless, in the following section I would look more in to this question.

Although the population of Rwanda are linguistically and culturally homogeneous, it was already clear to the first explorers that there were three distinct groups. They were called tribes, but that implies that it were three 'micro nations' living next to each other. This is not the case. They shared the same language, lived side by side

and often intermarried. But the groups had very different appearance. The Hutu had standard Bantu physical aspects, looked a lot like the neighbouring population in for instance Uganda. They were peasants who cultivated the soil. The Tutsi were cattle herders, tall and thin, with sharp, angular facial features. Due to the late nineteenth century obsession with 'race' among anthropologists this soon led to theorising and also fantasising in pseudo-scientific terms. The Twa and Hutu were definitely on the bottom of the pile, while the Europeans where quite fond of the Tutsi. They were seen as too refined too be called 'negroes'. Therefore the Europeans made up a lot of hypotheses about the possible origins of the Tutsi. Some writers could get really ecstatic about this superior race: *"We can see Caucasian skulls and beautiful Greek profiles side by side with Semitic and even Jewish features, elegant golden-red beauties in the heart of Ruanda and Urundi"(*Father van den Burgt cited in Prunier , 1998)

During the colonial time these type of writings became accepted scientific truth. Eventually the Belgian colonizers even wanted to document who was in which group and it had to be registered in their passport. Because it was too difficult to find out who was Hutu and who was Tutsi the Belgians based it on how much cattle some one had. Because the Hutu and Tutsi shared the same country, language and traditions, and intermarried for at least centuries, Mahmood Mamdani (2002) argues that the dichotomy is not cultural or even racial, but they are political identities.

Post-colonial time

In 1897 Rwanda was colonised by the Germans. This did not last long, because after the first World War, in 1916, Belgium got the mandate over Rwanda. The Belgians used a combination of direct and indirect rule and made use of the existing Rwandan class system. Eventually they stripped the Hutu from their, already limited, land power. In 1935 the Belgians decided that the Hutu/Tutsi classification, based on someone's amount of cattle, should be registered on the Rwandan identity cards. From 1959 on the Hutu rebel against the colonial power and the Tutsi elite. Therefore around 150,000 Tutsis flee to Burundi. In 1961 the Belgians withdraw from the area and the Hutu install a new president. The fighting continues and more and more Tutsi are forced to flee from the country. Throughout the sixties massacres of Tutsis continue and in the seventies and eighties Tutsis are more excluded from schooling, jobs etcetera. In 1986 Rwandan exiles in Uganda form the Rwandan Patriotic Front (RPF). RPF guerrillas invade Rwanda in October 1990, which causes a civil war. Meanwhile the Rwandan army begins to train civil militias, called the Interahamwe ('Those who stand together') and mass anti-Tutsi-propaganda starts. In August 1993 the governments and the RPF sign a peace

accord in Arusha, Tanzania, but the training of Interahamwe militias intensifies and also there is more extremist propaganda. So the peace accords are very unstable (Frontline, 1997).

The genocide of 1994

The instabilities of the peace accords became very clear when, on April 6, 1994, the airplane of the Rwandan president was shot down near Kigali Airport. There are various theories on who fired the missiles, but it is still unknown who really did it. Some of the more unlikely theories are that the French or Belgian troops were behind the attack, but the more reliable theories are that it were either the RPF or Hutu extremists. The RPF was blamed right after the attack, but the evidence was very inaccurate and the death of President Habyarimana was not in their political interest.

Therefore many suspect the extremist Hutu for the attack. Since 1993 the notion of a genocide became common talk in Kigali, many articles were suggesting that something might happen. Apart from this advance warnings also other clues point in the direction of the Hutu extremists. Especially the speed on which the killings started after the attack indicated a connection. These extremists called it the 'final solution' for the ethnic problem, therefore all the Tutsi had to be killed and also the moderate Hutu, because they helped a process of democratisation. So extremist Hutus started killing moderate Hutu politicians and Tutsis that same night the president died, and they were also setting up roadblocks.

The genocide that followed was well planned by the regime's elite. The killers were not only part of the Hutu militias, like the Interahamwe, but also local people. The killers were controlled and directed by the civil servants, who received their orders from Kigali. The killings could go on this efficient, because of the quality of the Rwandese local administration and the strong state authority and the strong acceptance of groups identification. This was also the result of years of indoctrination.

Most of the victims belonged to the Tutsi group. Especially in the countryside, where Hutu and Tutsi lived side by side, the identity of the villagers was public knowledge. To identify the Tutsi in the cities, where the people did not know each other that well, roadblocks were set up to check identity cards. If your were identified as Tutsi or did not have an identity card you were killed instantly. Also a lot of moderate Hutus were killed and also the intellectuals, both Hutu and Tutsi, were killed. Among the Rwandans were not that many bystanders. Either you took part in the killing or you were killed (Prunier, 1998).

The UN troops, who were in Kigali to monitor the implementation of the peace accords, were forbidden to intervene, because they only had a mandate to monitor. During the next few months almost 1 million Tutsis and moderate Hutus are killed. Meanwhile it takes the UN very long to intervene, because they do not want to call it a genocide, a term that obliges them to intervene. Finally the UN agrees to send troops, but it takes very long to get them on the ground, because of struggles over costs. In July 1994 the RPF capture Kigali and the Hutu government flees to Zaïre. An interim government is set up by the RPF, but the killing of Tutsi continues in refugee camps.

Culture of impunity

In the previous section I described the actions and history that lead to the 1994 genocide, but there is also another cause of the atrocities. This is what many call the 'culture of impunity'. A culture of impunity is caused by not acknowledging the past and not holding individuals accountable, for instance by blaming 'the war' (Graybill, 2004) New cycles of violence are more likely to be triggered if people know they will not be held accountable (Pankhurst, 1999). Thereby a vicious circle of violence can occur. This is exactly what happened in Rwanda right after the independence. Martin Ngoga, the Prosecutor-General of the Republic of Rwanda and Rwandan former envoy to the ICTR, even speaks of an institutionalisation of impunity (Ngoga, 2008). This began after the atrocities of 1959. In the decades following these events Rwandan governments passed several laws that protected themselves and their followers from prosecution, even though they seriously violated human rights. This institutionalisation of impunity officially began with the passing of a law on the 6th of august 1962 with afforded amnesty to the individuals who were responsible of the atrocities committed between 1 April and 1 December of 1961. This amnesty was granted because of the anniversary of the proclamation of the Republic of Rwanda. This law was followed by many other amnesty laws that broadened the period in which the criminal acts could be committed, but specified it to only people who had the same political view as the government (Ngoga, 2008). It was this impunity that created the right atmosphere for the following governments to plan and carry out the 1994 genocide.

2.2 After the genocide

After the military victory of the RPF in July 1994 it becomes clear that the entire country is devastated. With around a million people killed, 1.2 million refugees, another million people internally displaced, ten of thousands traumatized survivors and half a million Tutsi refugees returning and also substantial material damage the

country was a chaos (Reyntjens, 2004). On July 19th 1994 a new government took office and the RPF assured that they would govern to the terms of the Arusha Accord, so with the power-sharing agreements. But according to Prof. Reyntjens (2004), an African Law and Politics Professor, ten years after the genocide the power in Rwanda is still in the hands of a small group of RPF-leaders. Within two years after the genocide the regime was able to gain control over the state and society and had rebuilt the state apparatus.
It really looks like the Rwandan live in peace now, although it took immense human costs, also after the genocide, within Rwanda, but also beyond the borders. This is because Rwanda invaded Zaire-Congo twice after 1994 to fight the extremist Hutu who fled the country.

In the light of the genocide the current government is doing very well, but the fact that still people are excluded and robbed from their civil and politic rights and that the power is still in the hands of few should not be overlooked. This could eventually lead again to new violence.(Reyntjens, 2004)

2.3 Conclusion

The first conclusion that can be drawn from this chapter is that it is difficult to determine the cause of the genocide. It was a combination of factors which eventually led to the massive outburst of atrocities in Rwanda. Although it is difficult to exactly point out where it went wrong in Rwanda some main factors that led to this can be identified.
One of this factors are the two main groups in Rwanda, the Hutu and the Tutsi. How these were related in the pre-colonial time is unknown, but during the colonial time the Hutu are more and more disparaged. During the fight for independence in 1959 this already leads to atrocities. The burden between the groups intensified in the years leading to the genocide and this was misused by the country's leaders in hatred campaigns and propaganda.
Another factor is the culture of impunity. This followed the struggle for independence in the early 1960s. All the horrible things that happened remained unpunished and many murderers were granted amnesty. This fed the idea that doing such things was alright and already lifted some barriers for murders in 1994.
This all paved the way for something like the 1994 genocide. These factors should be considered when thinking about Rwanda's needs after the genocide. But also what happened during the horrible 100 days in 1994 has to be taken into account.

Almost every Rwandan was involved, as perpetrators and as victim. After the genocide the victims really wanted justice to be done. This was very important, not only for these people, but also to end the culture of impunity.
But this was not the only need of Rwanda. Also reconciliation was very important. This is because of the enormous involvement in the conflict. In order to prevent something like this to happen again in the future, something must be done to create an opportunity for these people to live peacefully as neighbours again. This is something that can not be done with justice and punishment alone. All these factors should be considered in the post-genocide period and how this is done can be found in the following chapter.

3. How Rwanda pursuits reconciliation and justice on a national and an international level

As seen in the first chapter Rwanda has a special form of dealing with its past, because of the multi-level approach. Rwanda was the first country that combined three different levels of justice, namely an International Tribunal, national courts and the Gacaca, the local court (Betts, 2005). This is a very unique construction which follows an incomparable past. But even though it might be the solution in this single situation, it is good for our understanding of the working of justice and reconciliation in post-genocide societies to study this case carefully. This is because the justice system in Rwanda had to be built up from scratch and the multi-level approach they use. In this chapter we will look deeper into this approach, the need for this kind of model and the different elements herein. Afterwards the relation between justice and reconciliation within and between these levels will be examined and if this will help reaching the goal of long-term stability for Rwanda.

3.1 Introduction to multi-level approach

Rwanda uses a multi-level approach in which the national justice system, as well as the ICTR (International Criminal Tribunal for Rwanda) and also the local gacaca has its place. Why the Rwandan government chose this approach after the genocide has various reasons. Right after the genocide amnesty was a frequently heard solution to deal with the enormous amounts of perpetrators, but the Rwandan Government urged for national prosecutions and maximal accountability. For the Rwandans and the Rwandan Government it was very difficult to reach these goals, because during the genocide not only many lives were destroyed, also the country's legal infrastructure was ruined, because many of the country's judges and legal professionals were killed, imprisoned or left the country. Moreover, more than 125.000 people where imprisoned (Megwalu & Loizides, 2009). These accused were categorised into four categories based on the degrees of their offence. In table 1 you can find the exact classification and in the following sections I will come back to it.

3.2 National justice system

As said earlier, the Rwandan Government urged for maximum accountability for the genocide perpetrators, so it was very important to quickly rebuild the nation's justice system. Not that there was much to rebuild, considering that already before the genocide there was not much of a justice system, due to corruption and a lack of qualified personnel. Rwanda had in those days between 700 and 800 judges of which less than 50 had any form of formal legal education. There were also just

around 20 official lawyers in the country. (Schabas, 2008) After the genocide only 20 judges were not killed, imprisoned or in exile.(Borland, 2003).

Legal Categories of Offense

Category	*Offense*	*Sentence*
I	Planners and supervisors of the genocide; perpetrators of rape and sexual torture	Regular: Death penalty or life sentence. With confession before indictment: 25 years to life imprisonment.
II	Perpetrators and accomplices of attacks, with intention to kill	Regular: 25 years to life imprisonment. With confession before indictment: 7–12 years; after indictment: 12–15 years (½ community service).
III	Perpetrators and accomplices of injuries, with intent to kill	Regular: 5–7 years imprisonment. With confession before indictment: 1–3 years; after indictment: 3–5 years (½ community service).
IV	Property theft or distruction	Court-ordered reparation of damages, or other settlement reached with victim.

Table 1 Source : Honeyman et al. Establishing Collective Norms:Potentials for Participatory Justice in Rwanda

Therefore in September 1994 the Rwandan Minister of Justice, Alphonse-Marie Nkubito, asked international assistance for the rebuilding of the justice system. The international community was responding positively to this request, but after a year, in September 1995, Nkubito was replaced by Marthe Mukamureni, who made clear that justice in Rwanda would be done by Rwandans primarily and that the foreign assistance would be of a secondary role. Taking this all into account, Rwanda was not capable to meet its obligations of its own criminal law, the international criminal law, as well as the international human rights. This led to the 1995 Kigali Conference (Schabas, 2008) which I will discuss later on in the section on the Gacaca.

Meanwhile, on the 30 of August, 1996 the Rwandan Government adopted the Organic Law. This is a law which officially criminalized the act of genocide and made it possible to prosecute the crime of genocide or crimes against humanity which were committed since 1 October 1990. This law also defined the four categories of offenders, which I mentioned earlier. The first category are the organisers and planners of the genocide, those with authority in the military or civil infrastructure who committed or encouraged genocide, or persons who committed 'odious and systematic' murders. In the second category are the persons who committed murder or serious crimes against a person, that led to death. Other serious crimes against the person are in the third category. In the last one are persons who committed

crimes against property (Schabas, 2008). This categorisation was made to identify different levels of responsibility for the genocide. This acknowledged that, although a high level of Rwandans participated in the genocide, only a small number of people planned and incited it. The classification also helped the Rwandan Government to manage the enormous caseload and to prioritise(Ngoga,2008). More detailed information on the classification and the advised punishment are presented in table 1. In this table you can also see that category 1- perpetrators could be sentenced the death penalty. This was officially possible until 2007. In that year the Government decided that the death penalty should be abolished. Actually, there were no capital punishments in Rwanda since 1998. In April of that year 22 perpetrators were publicly executed, but that led to a lot of discussing in the government. Unless many hundreds of death sentences the actual executions were put on hold during this discussing. They realised that this harsh form of retributive punishment was not the way forward, because it was not much of a help to reconciliation, although this was indeed a goal of the government. The decision to abolish the death penalty also gave way to the ICTR to transfer cases to national courts. The Tribunal did not wanted to do this if these accused still could face the death sentence. So this decision was a major step forward towards reconciliation also for category 1-offenders.

Another attempt to incorporate the question for reconciliation into the national justice system is the "Confession and Guilty Plea Procedure". This procedure is the heart of the Organic Law and in short it means that second, third and fourth category offenders can benefit substantial reduction of the penalty in return of a full confession. These confessions should consist out of a complete and detailed description of the offences, information about accomplices and other relevant facts (Schabas, 2008). This system should not be confused with the South African approach, where confession led to amnesty. In Rwanda the offenders could not get amnesty, only a reduction in jail sentence.

Even though amnesty is out of the question, the Rwandan system works very well. Did in 1997 only 500 people confess, by 2000 this number has grown to more than 20.000 confessions. Unless all these confessions, which speed up the process, it still takes an enormous amount of time to finish all the cases. In 2005 the prisons were filled with approximately 60.000 accused. At the current pace this would take around 80 years to prosecute. This was also a reason that led to the 1995 Kigali Conference (Schabas, 2008).

In sum, the national courts are working at the top of their capability to prosecute all the accused, but they lack sufficient judicial infrastructure and knowledge. Therefore they need the other forms of justice provided on the other levels discussed in the latter part of the chapter.

Justice or reconciliation?

What remains is the question of justice and reconciliation in the national courts. The main characteristic of the national courts is retributive justice, but the Rwandan Government also made way for reconciliation through the "Confession and Guilty Plea Procedure". A lot of prisoners make use of this procedure, which indicates that also the perpetrators themselves get a better understanding of what they did and what they did indeed was wrong. This could help very well in the process of reconciliation.

3.3 International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda (ICTR) was established to prosecute persons responsible for genocide and other serious violations of international humanitarian law, so the focus is on the leaders and planners of the genocide (ICTR Basis Documents and Case Law, 2009).

The ICTR was founded on November 8, 1994 by the United Nations Security Council (UNSC) resolution 955. The ICTR could be founded because of the UNSC resolution of 8 June 1994 which said that "genocide constitutes a crime punishable under international law" (UN Doc. S/RES/925, 1994 cited in Schabas 2008). This resolution made it possible to bring those responsible of the genocide to trial. Resolution 955 was adopted without the support of Rwanda, who where coincidentally sitting on the UNSC at that time. Although Rwanda was the country that called for such a Tribunal, they were the only country who voted against the resolution (Ngoga, 2008). (There was also one abstention, China.) Rwanda had a lot of reasons to vote against the resolution. For instance because of the prohibition of the death sentence, the lack of an independent prosecutor and appeals chamber and that the Tribunal will be located outside of Rwanda.

The Tribunal was mainly formed after the International Criminal Tribunal for the Former Yugoslavia (ICTY), which was established in May 1993 (Schabas, 2008). The Tribunal consists out of three organs. The first organ are the Chambers. There are three Trial Chambers with nine judges each, based in Arusha in the United Republic of Tanzania and one Appeals Chamber with seven judges, based in The Hague, the Netherlands. The second organ is the Prosecutor, who is responsible for the

investigation and prosecutions of the crimes. This Prosecutor is independent of the ICTR. The last organ is the Registry, who represents the UN Secretary General and is in charge of the administration and management of the Tribunal (ICTR Basis Documents and Case Law, 2009).

The first trials were held in 1995 and by the end of 2010 all work must be done, because then this Tribunal, as well as the ICTY have to be closed. Initially this had to be done in 2008, but the ICTR was not finished with its work in Arusha (BBC, 2009). According to the latest information of the ICTR, in October 2009, the Tribunal has arrested 81 persons, of those are 45 whose cases are closed, 27 are still in trial and 3 are awaiting trial. Another 9 are pending appeals. Of the closed cases around 23 are serving their sentence in prison, 6 are acquitted, 9 are released and 2 died (ICTR, 2009) Besides this the ICTR was also quite successful in some other areas. For instance, the Tribunal was very effective in trying the superior accused, so the planners and inciters of the genocide, like the former Rwandan Prime Minister and many of that Cabinet. They also made a lot of contributions in the development of international law. But the ICTR had also a lot of problems and failed in certain areas. Some of the concerns of the Rwandan Government appeared well founded. The ICTR was too far away for most of the Rwandan population, which undermined the efforts of the ICTR to promote reconciliation inside Rwanda. Another factor which affected the reconciliation efforts was the questionable neutrality. Mainly Hutu's were prosecuted, while members of the RPF were not tried for their war crimes (Betts, 2005). The Tribunal was also limited in resources and mandate. But what hurt the ICTR's effectiveness and credibility also very much was the corruption within the Tribunal. This effected especially the starting period of the Tribunal a lot (Schabas, 2008).

Justice or reconciliation?

Although the ICTR represents mainly a retributive model of justice it was also installed with a goal of reconciliation and contribution to the restoration of peace (Betts, 2005). Because the Tribunal is located in Arusha it is too far from the people it has to reconcile. Together with the invisibility of the ICTR in Rwanda it self, due to lack of covering by national media, its questionable neutrality and accusations of mismanagement do not give the ICTR a good name inside Rwanda (Betts, 2005).
Nonetheless, the ICTR has one major benefit. It provides large international recognition of the Rwanda genocide, and this is very important, because there are still members of the Hutu Power extremists, but also ordinary Rwandans, who still deny the genocide.

The ICTR is also getting more focused on their task of reconciliation. They are thinking more about reparation for victims, thus looking at their losses, and protection programs for witnesses. But also here they are limited by their resources and mandate (Jallow, 2008).

3.4 Conclusion

Both the national courts as the ICTR are mainly focused on justice. The benefit of this is that it makes clear towards the international community as well as to the Rwandans that the genocide is recognized as such and that crimes of genocide will not be left unpunished. But at the same time the goals of reconciliation are not reached, especially at the ICTR. This is because of the (physical) distance toward the Rwandans and the fact that mainly Hutus are judged in Arusha. This is also a problem at the national courts. This can seriously undermine the reconciliation process.

On the other hand, I do not think it is much of a problem that reconciliation is subordinated at this levels, because reconciliation is something that can be attained at the local level. Even though, focus on reconciliation at the national level can help to create more national unity and that is also a goal of the Rwandan Government.

4. How Rwanda pursuits reconciliation and justice on the local level

In the previous chapter two forms of justice systems in Rwanda, the ICTR and the national courts, were explored. But these forms were not enough to prosecute all the perpetrators of the genocide. Therefore the Rwandan Government organised a international conference from 31 October until 4 November 1995 in Kigali. On that conference the Government, with the help of many national and international experts, explored different ways to prosecute all the accused. At the conference South Africa urged for some sort of truth and reconciliation commission with a form of amnesty, which was, according to them, the appropriate 'African' way of dealing with these things, but the Rwandan president at that time, Pasteur Bizimungu, did call for innovative forms of justice, but at the same time ruled out any form of amnesty. Years later, in 2005, eventually amnesty was granted to around 36,000 suspects. This was because they where accused of committing 'category 3 and 4' offences (comparatively minor cases, like theft and attacks without murder). These persons plead guilty and were longer in jail than their maximum sentence would be. Therefore they where granted amnesty. Another group who got amnesty in this year were people who were minors during the genocide (BBC, 2005).

At the conference many suggestions were made regarding the national justice system, but also some suggested to explore the more traditional forms of justice, like the Gacaca (Office of the President, 1995). In 1998 President Bizimungu formed a commission which was to explore the possibilities of public participation in the justice system. This 15-member commission suggested the establishment of Gacaca-court. In this section I will tell more about the origins of this court, that is the ancient, pre-colonial, form of Gacaca. In the second part I will look more into the post-genocide form of Gacaca, which was installed in 1999, how this relates to the ancient form and how this contributes to the pursuit of justice and reconciliation in Rwanda.

4.1 Ancient gacaca

"We chose to look back in history for a solution" said Charles Kayitera, director of communication of the Gacaca Department of the Rwandan High Court of Justice, to explain why the gacaca were founded to prosecute thousands of accused persons. To find out how much of this justice system is really rooted in the past I start with looking at the pre-colonial forms of gacaca and how these have evolved in the gacaca-courts which are currently used in Rwanda.

According to many sources Gacaca is Kinyarwanda for "grass" or "lawn" (Schabas, 2008), but in his research about the Gacaca Arthur Molenaar interviewed Rwandan

who pointed out a very soft plant, Umugaca, on which the Gacaca traditionally was situated and after which it was named (Molenaar, 2005). Both the explanations refer to the outdoors, where the court is situated.

It is difficult to get reliable information about the pre-colonial gacaca or even the entire pre-colonial history of Rwanda. This has several reasons. First of all, the Rwandan society, like many African societies, passed on their history, traditions and customs orally and did not write this down. These tales became a mixture of truth and mythology, which is not a reliable basis for historical writings. The second reason is that since the colonial time political elites misused history to ensure their own position. History was falsified, idealized or propagated and what is know about the history of gacaca is also attained from these questionable sources. Even nowadays the government is eager to present the ancient Rwanda as a country were all the groups lived in harmony and that the Gacaca was the backbone of this harmonious life.

Despite the lack of reliable historical information on the pre-colonial Gacaca, known is that it resembled a lot of other traditional African justice systems. The characteristics of these systems, and of the Gacaca, are that it was purely oral, the judges were heads of the family, thus member of the community, the Gacaca was flexible and informal and the last, and most important, characteristic is that it focussed on reconciliation. All the procedures and sanctions were focussed on this goal. So a prison sentence was never demanded, instead the perpetrators had to repair the damage and had to provide the beer for the ceremony at the end of the Gacaca meeting (Molenaar, 2005). What remains is uncertainty about what types of disputes the Gacaca used to solve. According to a UN research, Gacaca dealt mainly with civil conflicts, like land conflicts, pastoral conflicts and conflicts within families (UNHCHR, 1996 cited in Molenaar 2005). What the role of the Gacaca was in more major cases, like theft or murder, is unknown. Some, like the Centre for Conflict Management of the National University of Rwanda, argue that the Gacaca was the main justice system, while others, like Modeste Nzanzabaganwa, a Rwandan expert on oral history, say that these types of disputes are more likely to be brought before a chief or the mwami (king)(Molenaar, 2005).
During colonial times the Gacaca started to lose its power. Even though the Belgians used a form of indirect rule, from the beginning the traditional structures were changed and weakened. They reduced the legitimacy of the mwami and the chiefs and introduced western law, which made traditional law inferior. The Belgians did not change or forbid Gacaca, but the new system influenced the Gacaca a lot.

Especially when a new generation grew up with the western ideas of justice the Gacaca became out of fashion (Molenaar, 2005).

When Rwanda gained independence the monarchy was abrogated and with the monarchy also a lot of the traditional legal structures. This was because the Hutu-majority, who were in charge now, associated these structures with the former Tutsi domination. The new government introduced a uniform body of written laws, but the courts where overloaded, so still a form of the old Gacaca was needed, but not much of the traditional form was left. The place of the old men was taken over by government officials, the trials were held on fixed days and testimonies were written down. But there was still high participation of the community and a main focus on reconciliation (Molenaar, 2005).

4.2 Post-genocide Gacaca

After the genocide the Rwandan Government tried to prosecute all the accused in the national courts, but this was impossible within a reasonable amount of time. On 16 January 2001 the Organic Law no. 40/2000 "on the Establishment of Gacaca Jurisdictions" was adopted. This law made it possible to prosecute the people who were categorized in category 2, 3 or 4 (these are almost all the accused, except the planners and supervisors of the genocide, and those who are accused of rape and sexual abuse) (For more information see table 1, Chapter 3) under Gacaca Courts (Organic Law No 40/2000, 2001). To form Gacaca courts was already suggested in 1995, but was then rejected by the Rwandan Government. They thought it was too soon to put together the Rwandan people to discuss the genocide and to search for a solution together. But soon they realized that the normal justice system could not cope with the amount of accused and after a few years of research into the possibilities of restoring the Gacaca the Organic Law no. 40/2000 was passed.

This newly formed post-genocide Gacaca resembles the traditional, pre-colonial, version in several ways. First of all, the outdoor setting is maintained, there is still a high community participation and the punishment should also lead to restoration and reconciliation. Although the new Gacaca still resembles the traditional form, mostly on the outside, it also differs on important points. The main differences are that the modern version relies mainly on written law, women can be involved, both as judges and witnesses, and prison sentences are possible (Molenaar, 2005).

The current mission of the Gacaca processes is to disclose the truth, speed up the trials, eradicate the culture of impunity, reconcile the Rwandans and strengthen their unity and to prove the Rwandan society's capacity to solve its own problems. In 2001 the pilot phase of the Gacaca started and in 2006 nationwide Gacaca trials had to be held. Then there were a total of 12,103 courts, of which 1545 appeal

courts. These appeal courts are also new in the post-genocide Gacaca. In the pre-colonial time the cases had to be solved locally and if that did not work out by the mwami (Molenaar, 2005). There are a total of 169,442 judges in these courts. These judges are men and women who are elected by the Rwandan population based on their integrity. Around 85% of the Rwandan population is actively involved in the Gacaca Courts. The activities of the Courts were formed in three steps. The first step was the collection of information, the second step was the categorization of prosecuted persons and the final step was the actual trial of these persons (National Service of Gacaca Jurisdictions, 2009). Each meeting had a somewhat similar composition, but varied between the different steps.

The meetings had to start around 9 am each week, but could only start if the quorum of 100 persons was reached. Because many people preferred to work on the land in the mornings it took mostly until noon before the quorum was reached. When enough persons were present the president of the General Assembly opened the meeting and a minute of silence, in memory of the victims and to think about national reconciliation, followed, but in practice the full minute was not reached. In some cells this 'minute' of silence was followed by a prayer or the singing of the national anthem. During the first step of the Gacaca these formalities were followed by gathering data about what happened in the cell during the genocide. First a list is made with the people who lived in the cell before 6 April 1994 and a list of people who died within the cell's boundaries and outside. Throughout the country these meetings were almost identical, what indicates that the presidents (or chairmen) are well trained. The steps that followed were far more delicate than this first one, because in the second step names had to be provided of who was responsible for the killing, thus people had to point out other people of their own community and describe in detail their actions. These accused then has to be categorized (see table 1, chapter 3). The third step was the judgment phase. At the cell level they dealt with the fourth-category accused, thus ones who did minor offences, like property theft and vandalism. At the sector-level the persons categorized in the third category and on the district-level they dealt with the second category. The appeal courts where organized on the provincial level. The Gacaca was not meant to deal with the category-one accused (Molenaar, 2005).

Critique on the Gacaca courts

The majority of the critique on the Gacaca courts comes from people with a legal or human rights background (Clark, 2008). They view the Gacaca also with that focus, while the social and reconciliation aspect are secondary for them. The main critique is that the Gacaca courts do not incorporate the international standards of fair trial. For instance, the cases are not heard by a neutral third party, but people who are

involved in the matter handle the cases. Thereby there is a lack of legal counseling for the accused.
But the Gacaca Courts are more than an innovative justice system to punish all the perpetrators to end the culture of impunity. It is more than only the legal side. The expectations were that Gacaca would also play a huge role in the reconciliation process. To get the different groups in a community together to discuss not only the legal aspects of the genocide, but also the non-legal side of this to engage the previously conflicting parties. Punishing the perpetrators is not enough to rebuild Rwanda. With this form of discussing and getting people back together, setting the population at the center of the Gacaca, the prediction was that much more, than just plain justice, would be accomplished (Clark, 2008).

Another main point of critique is on the fact that the main focus of the Gacaca courts is on crimes of the Hutu *génocidaires* ,while the crimes committed by Tutsi and the RPF against Hutu in the aftermath of the genocide are widely neglected.
This critique is not only addressed at the Gacaca courts, but at the entire Rwandan justice system and is also heard in relation towards the ICTR. In my opinion it is important also to prosecute members of the RPF who committed crimes during the genocide. If they are granted amnesty, that will again feed the culture of impunity they are so desperately wanting to conquer, while it feeds the sense of discontentment and criminalization for the Hutu. This feeling can easily lead to new forms of violence and stand in the way of long term stability and reconciliation.

If we look at the Gacaca from its main objectives, which are restorative justice and reconciliation, it can be evaluated more fair. The government hoped that the Gacaca would be a good start for reconciliation by getting entire communities, victims as well as perpetrators, together to talk. At the one hand this objective is met, because many victims also indicated a sense of healing when they tell about the Gacaca, because the courts provide them the opportunity to openly speak about what happened to them and to find out what happened to their loved ones. This provides healing and closure (Clark, 2008). But a challenge for the Gacaca is the low turn out in some areas. This has various reasons. One of those is that it is very hard for these persons to testify, because it is like reliving the worst moments of their lives. Another reason is that they are afraid to testify, because they fear reprisals (PRI,2005). An other very important reason for not going to Gacaca meetings is of an economic nature. Especially for the poorest people attending the meetings weekly is an enormous sacrifice, they rather spend a day working and providing for their family, than attending a time-consuming Gacaca meeting (Clark, 2008). This can also be seen in the research of Arthur Molenaar (2005), who investigated the Gacaca

Courts in several cells (Rwandan sub-districts). He saw a lot of variance in the attendance of the Gacaca meetings. At first large groups attended the meetings, sometime up to 90 percent of the adult population, but eventually this dropped, sometimes even under 10 percent of the adult population. Likely this had to do with the cancelation of the quorum. At first every Gacaca had to have at least 100 participants, or else the meeting would be cancelled. This quorum was dropped in October 2002. In some cells the attendance immediately dropped, while in other areas the turn-out remain high. This was also an outcome of an other research, which was held in other cells. This research reports that the participation is very successful, because around 82 percent of the population attend regularly at Gacaca meetings, with the majority of these attending weekly (Megwalu and Loizides, 2009). Thus, it is hard to tell how the average Gacaca attendance is, because it varies a lot throughout the country and from time to time, depending on the amount of time people have not to work for an entire day. How long the Gacaca court will be handling the genocide cases is unknown. Already in November 2007 the Rwandan President Kagame announced the end of the Gacaca (EUXtv, 2007), but now there are signs the Courts will last at least to the end of 2009, but could also continue if the work is not done by then (Hirondelle News Agency, 2009).

It is difficult for me to tell more about the current workings of the Gacaca, because most of the available literature is about the expectations of the Gacaca, or held in the pilot phase of the Gacaca. Therefore not much reliable data is available, which makes it very difficult to draw clear conclusions. Especially because some modifications have been made since the pilot phase (Megwalu and Loizides, 2009). Because of the coming closure of the courts I expect that more research will be carried out on the outcomes of the Gacaca.

4.3 Conclusion

Since 1995 a lot of effort is put in the creation of an innovative new form of a justice system for Rwanda. What began as one of the possibilities at an Conference in Kigali, became a nationwide system in 2006. The Gacaca is based on Rwanda's traditional pre-colonial form of local justice, but differs on many points. The main point is that nowadays accused of genocide-crimes can be prosecuted for a court which was originally designed for minor defences in a community.

Within the modern Gacaca elected local 'judges', instead of the elderly man, take seat and can the local people participate. The Gacaca courts are a move away from the retributive justice approach which was the earlier post-genocide approach (Schabas, 2008), as seen in the national courts and the ICTR, and a move towards more restorative justice and reconciliation. It is a unique form of justice, on which many believe, that it can deliver justice on such a scale that it can break with the

culture of impunity (Silva- Leander, 2008), which lay in the origins of the genocide. But to really break with this culture of impunity the Gacaca courts really have to be neutral and also have to prosecute Tutsi suspects, not only Hutu. This can lead to a whole new form of selective impunity. This is one of the main critiques on the Gacaca, as well as on the Rwandan post-genocide justice in general.

Other critiques on the Gacaca mostly have a legal basis. Legal experts focus mainly on the justice side of the Gacaca and point out that these courts do not follow the international standards of fair trial, because the judges are not a neutral third party and legal counseling for accused is missing. With this critique they forget that the main objective of the (modern) Gacaca is reconciliation and the reintegration of perpetrators in their community. Therefore the focus does not lay on the justice side, but more on the coming together to talk about the genocide, and the legal, as well as the non-legal side of this. Therefore it is quite shortsighted to only evaluate the Gacaca from a legal angle. You should also evaluate it with the reconciliation objective in mind. This objective is much more difficult to measure, especially this short after the implementation of the Gacaca.

Reconciliation takes time, but at this time a good start is made for the reconciliation of the Rwandans, because nowadays it is relatively stable in the country and many people are willing to participate in the Gacaca and talk about their painful past.. The Gacaca really brings the different groups together to talk, although the turn-out at the meetings varies, because some people do not see it as very important or easily do not have the time to leave their work for each meeting. It is difficult to say more about the actual workings of the Gacaca, because broad and large scale research into this is not yet present. Thus, for the final, long-term effects of the Gacaca we have to wait a few years. The foundation is laid out by now, but how it continues to work in the future is hard to predict. To find out how the Gacaca effect the Rwandans we should look at the stability in the country and how people of the different groups think about each other and interact. These are some factors on which the affectivity of the Gacaca can be measured in the future.

5. Conclusion & Discussion

In the previous parts much is said about what justice and reconciliation entail and how these work in a post-genocide society like Rwanda. In this chapter I will make some final conclusions and hope to answer my main question as stated in the introduction, namely: What is the relation between justice and reconciliation in the post-genocide justice systems of Rwanda?

As seen in chapter one, both justice and reconciliation are difficult to define terms. Also the relationship between the two is vague. Is there altogether a relationship between the two or are it absolutely different concepts? One of the leading authors on this subject, Lederach, says that justice is a vital part of reconciliation, but mostly a restorative form is meant in this context. A retributive form of justice is in his theory opposite to reconciliation (Lederach, 1997 cited in Molenaar 2005).
In my opinion there should not be a choice between either (retributive) justice or reconciliation in a post-conflict or post-genocide situation. It should be a balance between the two, because when you only focus on justice, you just punish people and focus on a feeling of guilt, but that is only something you impose on people. They do not have to feel themselves that they did something wrong. Another point is that the perpetrators are separated from the victims and other survivors, by putting them in jail. This does not heal a country and can lead to new tensions when most perpetrators are released. In a post-conflict situation justice is necessary to individualize guilt, to show that not an entire population is to blame, but only the real perpetrators. This is a step towards reconciliation. Reconciliation is necessary to create a country where the conflicting parties can build a stable future together. This is something that can not be imposed from the top, on that level only an example can be made. Real, personal reconciliation can be created on a local or even personal level. It has to come from both victims and perpetrators. But it is impossible to force people to reconcile, therefore reconciliation is not an easy process and it can take many years.

When you only focus on reconciliation, other problems can occur. Without punishment or even amnesty and only reconciliation you can build a country where the former enemies can live together. But in the long run it can feed a 'culture of impunity', because the people can get the feeling that major crimes just stay unpunished in times of crisis.

In South Africa they used the latter approach after the Apartheid. The focus was on reconciliation and amnesty, which they consider a true 'African' post-conflict

approach, which they also suggested to Rwanda. Within this approach there is not much room for justice. The main focus of this form of reconciliation is on mercy, forgiveness and peace, but due to amnesty retribution becomes difficult, because this contradicts with amnesty. How this move away from retributive justice works out in the long run and if it creates a stable peace, has to be seen in the future.

In the second chapter I gave an overview on what happened in Rwanda after the colonial time and what led to the 1994 genocide. One of the major factors was the tense relation between the two main groups in Rwanda, the Hutu and the Tutsi. The Hutu made up around 85 percent of the population and the Tutsi 15. How these were related in the pre-colonial time is debatable. The current government portrays that period as very peaceful, but how much of that is true and how much is used for reconciliation purposes is unknown. Previous Rwandan rulers also used the past to fit to their ideas. Therefore little is known about the real past of Rwanda. During the colonial time the tensions between the Hutu and Tutsi reached new levels, because the Belgians favoured the Tutsi and gave them better positions and education. Around the mid-50s the Hutu emancipation began to take serious forms and after the struggle for independence and the atrocities of 1959 they gained the power. The Belgians left Rwanda, but the fight between the Hutu and the Tutsi continued. Many Tutsi fled to neighbouring countries. In 1990 the, by Tutsi in exile formed, RPF invaded Rwanda which led to a civil war. In 1993 a peace agreement was signed, but both parties were not ready for this, a lot of tensions still existed. This led to the 1994 genocide, which was sparked by the killing of the Hutu-president. Right after that the killings started and lasted for about 100 days. Around a million people where killed and lots of people fled the country. Almost every Rwandan was involved in the atrocities. Finally the RPF managed to invade Kigali and end the genocide.

After this Rwanda faced major problems: overcrowded prisons, major traumas and many Rwandans in exile or returning. Meanwhile the entire infrastructure was ruined, the physical infrastructure, as well as the social, juridical and economical infrastructure. Rwanda used very innovative ways to deal especially with the devastated juridical infrastructure. They developed a multi-level approach over time. First the ICTR was installed at the end of 1994 by the United Nations Security Counsel to prosecute the leaders and planners of the genocide. At the same time a start was made to rebuild the national justice system. They began to categorise the accused into four categories, depending on the crimes they committed. After that they slowly began to trial everybody.

Although both these courts had justice and reconciliation as their goal, the two mainly focussed on retributive justice. This was why Mamdani (1996 cited in Graybill, 2004, p. 1121) stated that Rwanda pursuits justice without reconciliation (see also chapter 1). He said this before the Gacaca courts were set up and this indicates that reconciliation was mostly missing in the process. This was not only because punishment had a higher priority, but also because reconciliation on these levels is very difficult. There was a possibility for national reconciliation, by focussing on national unity, but the ICTR had a large (physical) distance to the Rwandan, because of its location in Arusha, Tanzania and at the national level they were so determined to end the culture of impunity that punishment was their main focus. Also the fact that mainly Hutu's were accused and not much attention, or no attention at all, was paid to the deeds of the RPF did not help to attain national unity. It is also very difficult to create personal reconciliation at this level, that is something better done in personal relationships. At these levels you can only create national reconciliation, by focussing on national unity. This is something the ICTR and the national courts can work on.

Because of the enormous amount of accused and the overcrowded prison Rwanda needed something to speed up the process. Although they ruled out amnesty in 1995, they granted some people, who were already longer in prison than their maximum sentence would be, amnesty ten years later. But this was not the innovative solution Rwanda became known for. This was the Gacaca system, a traditional local justice system which was reintroduced in 2001. With this approach the Rwandan Government puts a larger focus on reconciliation processes. It is a system whereby an accused would be prosecuted by locally elected 'judges', through discussing and talking with the community about what happened to them and to the victims during the genocide.
It is a large scale form of justice, which stands close to the population of Rwanda. Therefore it can be a very good tool to fight the 'culture of impunity' and end the cycle of violence which afflicted Rwanda since its independence.

The Gacaca also got a lot of critique, mostly from legal experts, but they forget that Gacaca does not only have a legal side, but that reconciliation also plays a huge part. So for a fair examination of the Gacaca they also have to take that into consideration.

As it seems now the Gacaca can be a great help towards the reconciliation objective of the Rwandan Government, because it brings the different groups together to talk

and I think it provides a good alternative to the regular, national, justice system, because it really helps dealing with the amount of prisoners.
Something that can challenge the working of the Gacaca is the turn-out at the meetings which varies a lot, because for some people it is too confronting to go to these meetings or they easily do not have the time to leave their work for each meeting. Thus, if Rwanda really reconciles through the Gacaca courts remains a question. To find a proper answer to this question we have to see what the future brings. The foundations are laid out, but if a long-term stability follows from this is hard to predict.

As said before, there should be a balance between justice and reconciliation in a post-genocide situation. In Rwanda the main focus in the justice system is on (retributive) justice. This is, in the light of their past, very understandable, but, in my opinion, the challenge for Rwanda lies in focusing more on reconciliation. Thus, honestly facing their past, and involving everybody. To look beyond their own groups, so beyond Hutu and Tutsi, toward Rwandan unity. Therefore the government, especially the RPF, should not be afraid to also look into their own role during and after the genocide, and should they also be held accountable for their deeds. They should also try to bring the national courts and the ICTR closer to the people of Rwanda, that they can see what happens on that level. Finally, they should provide people more possibilities to attend the Gacaca meetings, so that they can get more involved in this formation of new community life. Of course, reconciliation is not only manifested in the justice system, but it goes beyond the scope of this thesis to go more into that. Further research on the effects of this broad form of reconciliation in Rwanda will be very useful.

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